*United States Court of Appeals*

*for the Second Circuit*

# APPELLANT'S APPENDIX

ORIGINAL

# 74-2058

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In The

## United States Court of Appeals

For The Second Circuit

SAMUEL PARKINSON as Custodian for ANDREW PARKINSON, JONATHAN STAEBLER and PETER MYGATT,

*Plaintiffs-Appellees,*

- against -

APRIL INDUSTRIES, INC., ARTHUR FEDER, MORRIS DEMEL, NATHAN APTEKAR and STANLEY SILVER,

*Defendants-Appellants,*

and

ALEX M. PARKER,

*Defendant.*

# APPENDIX FOR APPELLANTS



WILBUR G. SILVERMAN
*Attorney for Defendants-Appellants*
88-11 169th Street
Jamaica, New York 11432
AX 7-7177

(7765)

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## TABLE OF CONTENTS

### Appendix


| | Page |
|---|---|
| Docket Entries . . . . . . . . . . . . . . . . | 1a |
| Complaint (Filed April 27, 1973) . . . . . . | 3a |
| Answer of Defendants Except Parker (Filed September 19, 1973) . . . . . . . . | 10a |
| Answer of Defendant Parker (Filed September 21, 1973) . . . . . . . . . . . . . | 12a |
| Plaintiff's Notice of Motion and Affidavit to Maintain Action as Class Action (Filed October 23, 1973) . . . . . . . . . | 15a |
| Exhibits Annexed to Foregoing Notice of Motion and Affidavit: | |
| A - Letter Dated June 4, 1973 From National Association of Securities Dealers . . . . . . . . . . . . . . . . . . | 23a |
| B - Research Report . . . . . . . . . . . | 24a |
| C - Research Report . . . . . . . . . . . | 26a |
| D - Progress Report . . . . . . . . . . . | 38a |
| E - Report . . . . . . . . . . . . . . . . . | 44a |
| F - Report . . . . . . . . . . . . . . . . . | 50a |

Contents

Page

G - Report . . . . . . . . . . . . . . . . . . 58a

H - Report . . . . . . . . . . . . . . . . . . . 60a

Affidavit in Opposition to Plaintiff's Motion for Class Action Determination, on Behalf of Defendant, Parker (Filed December 21, 1973) . . . . . . . . . . . . . . 71a

Decision and Order, Whitman Knapp, J., Granting Class Action Status (Filed July 2, 1974) . . . . . . . . . . . . . . . . 77a

Defendants' Except Parker Notice of Appeal From Order Granting Class Action Status (Dated July 25, 1974) . . . . 84a

Defendants' Except Parker Affidavits and Exhibit in Opposition to Plaintiffs' Motion . 85a

Reply Affidavit and Exhibits in Support of Plaintiffs' Motion to Maintain Action as a Class Action . . . . . . . . . . . . . . 101a

July 26 1977

CIVIL DOCKET

UNITED STATES DISTRICT COURT

DOCKET ENTRIES

1a

D. C. Form No. 106 Rev.

{CLASS ACTION}

Jury demand date: by pltff. 4-27-73

73 CIV. 188

TITLE OF CASE

SAMUEL PARKINSON, AS CUSTODIAN FOR ANDREW PARKINSON, JONATHAN STAEBLER, AND PETER B. MYGATT

AGAINST

APPEL INDUSTRIES, INC.
ARTHUR FEDER,
ALEX M. PARKER,
MORRIS [illegible]
NATHAN APTEKAR AND
STANLEY W. SILVER.

ATTORNEYS

For plaintiff:
SHATZKIN & COOPER
235 East 42nd St.
N.Y.C. N.Y. 17
MU 7- 8800

For defendant:
Wilbur G. Silverman
88-11 169th Street, Jamaica, N.Y.
212-AX 7-7177 (deft's, all excep

Dornbush Mensch Mandelstam & Sc
22 East 49th St. N.Y. 10016-685-7
(Deft. Alex M. Parker)

SEP 3 1974

8506-1974

| STATISTICAL RECORD | COSTS | | DATE | NAME OR RECEIPT NO. | REC. | |
|---|---|---|---|---|---|---|
| J.S. 5 mailed X | Clerk | | 4/27/73 | Shatzkin [illegible] | 15 | |
| | | | 5/1/73 | US [illegible] | | 15 |
| J.S. 6 mailed | Marshal | | | | | |
| Basis of Action: S.E.C. ACT. 1934 | Docket fee | | | | | |
| | Witness fees | | | | | |
| Action arose at: | Depositions | | | | | |

A

SAMUEL PARKINSON, ET-AL VS. APRIL INDUSTRIES, ET-AL

2a JUDGE K

73 CIV. 18

| DATE | PROCEEDINGS | Date Of Judgment |
|---|---|---|
| Apr27-73 | Filed Complaint. Issued Summons. | |
| May 24,73 | Filed Stip and order extending time to answer until 6/22/73 .(Parker and Aptekar) So Ordered. KNAPP,J. | |
| Jun.27,73 | Filed stip and order extending time for defts. Alex M. Parker and Nathan Aptekar to answer until July 23,73. SO ORDERED. KNAPP,J. | |
| Jul.10,73 | Filed summons and marshal's ret. April Industries not served, Arthur Feder not served, Alex M. Parker by Wife 5/3/73, Morris Demel 5/19/73, Nathan Aptekar 5/14/73, Stanley W. Silver by wife 5/11/73, and April Industries, Inc. Not served. | |
| Jul.10,73 | Filed Additional Summons and marshals ret. Served April Industries, Inc. by Linda Austin, Sec'y United Corp. Services 6/27/73. | |
| JUL.19-73 | Filed stip & order that time of deft's to answer complaint is ext. to 8-23-73. Knapp,J. | |
| Sep.14-73 | Filed stip & order time of deft. A.M. Parker to answer complaint is ext. to 9-14-73. Knapp,J. | |
| Sep.19-73 | Filed ANSWER to complaint by deft. all except PARKER. | W.G. |
| Sep.21-73 | Filed ANSWER to complaint by deft. AM. Parker. | DMM& |
| Sep.24-73 | Filed stip & order that time of pltff. to make any motion shall be ext. not later than 30 days from the date which appearance, answer, or motion of said deft. shall be served. Deft. A.M.Parker to answer complaint is ext. to 9-21-73. Knapp,J. | |
| Oct.3-73 | Filed pltff's interrogs to deft's first set. | |
| Oct.23-73 | Filed pltff's affidavit & notice of motion declaring action to be maintained as class action ret.11-2-73. | |
| Oct.23-73 | Filed pltff's memorandum in support of class action determination. | |
| Nov 13-73 | Filed answers of deft. Alex M. Parker to first set of interrogs. | |
| Nov.13-73 | Filed stip & order that time of deft. A.M.Parker to answer to the first set of interrogs by pltff. is ext. to 11-13-73. Knapp,J. | |
| Nov 16-73 | Filed stip & order adjourning pltff's motion to Dec. 7, 1973, Knapp,J. | |
| Dec.14-73 | Filed pltff's affidavit & notice of motion Re: Judgment Ret.12-28-73. | |
| Dec.21-73 | Filed deft's (Alex M. Parker's) memorandum in opposition to pltff's motion for class action determination. | |
| Dec.21-73 | Filed affidavit of R.J.Schaeffer in opposition to pltff's motion for class action. | |
| Jan.2-74 | Filed deft's, except deft. Parker answering the first set of the interrogs by pltff. | |
| Jan.10-74 | Filed memo-Endorsed on pltff's motion filed 12-14-73 Re: judgment: Mo[illegible] withdrawn. Knapp,J. | |
| Jan.31-74 | Filed [illegible]f's notice to take deposition of persons as indicated. | |
| Jan.31-74 | Filed pltff's notice to take deposition of S.D.Leidesdorf & Co, issued subp. | |
| Jul.2-74 | Filed ORDER that pltff moves for an order declaring that this action be maintained as a class action. The motion is granted. So ordered. Knapp,J. | |
| Jul 26-74 | Filed deft's (Alex M. Parker) notice of appeal. m/n | |
| Jul 26-74 | Filed Notice of Appeal for April Industries et al | |
| Aug 29-74 | Filed answers to interrogatories | |
| Aug 29-74 | Filed Reply Memorandum in Support of Pltffs motion. | |
| Aug 29-74 | Filed Reply Affidavit of L. Sabaton | |
| Aug 29 74 | Filed Deft Memorandum in opposition to motion | |

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By R.E. Thompson
Deputy Clerk

COMPLAINT (Filed April 27, 1973)

United States District Court
Southern District of New York

Samuel Parkinson, as custodian for Andrew Parkinson, Jonathan Staebler and Peter B. Mygatt,

Plaintiffs

-against-

April Industries, Inc., Arthur Feder, Alex M. Parker, Morris Demel, Nathan Aptekar and Stanley W. Silver,

Defendants

Class Action Complaint

Plaintiff Demands Trial by Jury

Plaintiffs allege on information and belief (except as to ¶¶ 1, 2 and 4, which are alleged upon knowledge):

Jurisdiction

1. This action arises under §10(b) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 thereunder. Jurisdiction is invoked by virtue of §27 of said Act.

Class Action Allegations

2. (a) Plaintiffs bring this action on their own behalf and in a representative capacity on behalf of other persons similarly situated, namely, all persons who purchased securities of April Industries, Inc. ("April") between June 1, 1972 and December 18, 1972.

(b) The members of the class are so numerous that joinder of all of them is impractical; in excess of 500 persons were purchasers of April stock during the period in question.

(c) Common questions of law and fact are involved in this action. The common questions of fact include whether defendants artificially inflated the earnings and propects of April and, by the use of false and misleading statements,

manipulated the market price of April. Common questions of law include whether defendants violated the Securities Exchange Act of 1934 by such actions. The common questions of law and fact predominate over any questions that may affect the individual members of the class.

(d) Plaintiffs' claims are typical of those of other members of the class.

(e) Plaintiffs will fairly and adequately protect the interests of the class.

(f) The class action is superior to other available methods for the fair and efficient adjudication of this controversy.

Substantive Allegations

3. As hereinafter set forth in connection with the purchase and sale of securities of April, defendants singly and in concert, directly or indirectly, by the use of means or instrumentalities of interstate commerce and of the mails, in the Southern District of New York and elsewhere in the United States:

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices and a course of business which would and did operate as a fraud and deceit upon plaintiffs and members of the class.

4. (a) Plaintiff Parkinson, as custodian for Andrew Parkinson, acquired 500 shares of April's common stock at a price of 9-1/8 on or about December 6, 1972.

(b) Plaintiff Mygatt acquired 775 shares of April common stock at an average price of 13-5/16 on or about July 16, 1972. Said shares were sold on or about December 22, 1972 at 4-3/4.

(c) Plaintiff Staebler acquired 225 shares of April's common stock at an average price of 13-5/16 on or about July 16, 1972. Said shares were sold on or about December 22, 1972 at 4-3/4.

5. April is a Delaware corporation with executive offices at 303 W. 42nd Street, New York, N. Y., and operating offices in the Commonwealth of Puerto Rico.

6. At all relevant times the defendants were directors and controlling persons of April; defendant Feder was president; defendant Parker was Chairman of the Board; defendant Demel was executive vice president; defendant Aptekar was vice president and treasurer and defendant Silver was vice president and secretary.

7. Beginning in or about June 1972 and continuing thereafter until at least December 18, 1972, April's financial reports, statements, releases, predictions and estimates were materially false and misleading as the defendants therein knew or in the exercise of reasonable diligence should have known.

8. During the period commencing June 1972 up through November 1972, defendants made statements orally and in writing to securities analysts and others in the securities industry

and to the investing public with the knowledge and intent that such statements would be relied upon and would affect the price of April stock in the open market. Among the statements made were the following:

(a) As of July 1972 management estimated that April would have net profits of $1,890,000 (or $1.30 a share) after taxes in 1972 and $2,554,000 in profits in 1973 (or $1.90 a share).

(b) As of October 1972 management estimated that April would have a profit margin for the year 1972 of approximately 20% after taxes.

(c) April had no long term debt and did not require long term financing in connection with its business activities.

(d) April had earned $336,765 (or 25¢ a share) after taxes for the three months ended March 31, 1972.

(e) April had earned $431,860 (or 31¢ a share) after taxes in the three months ended June 30, 1972; April had earned $768,000 (or 55¢ a share) after taxes for the six months ended June 30, 1972.

(f) April had earned $366,773 (26¢ a share) after taxes in the three months ended September 30, 1972; April had earned $1,135,398 (or 80¢ a share) after taxes for the nine months ended September 30, 1972.

(g) April's "team of management and construction specialists [had] forged a powerful and unique construction company."

9. The aforesaid statements were false and misleading in that:

(a) Defendants knew or in the exercise of reasonable diligence should have known that April's earnings for the year 1972 could not achieve $1,890,000.

(b) Defendants knew or in the exercise of reasonable diligence should have known that April was operating at a marginal level throughout 1972 and would sustain a loss for that year.

(c) April's inability to obtain long term financing was a fundamental weakness which affected adversely its ability to make profits.

(d) April's earnings for the three months and six months ended June 30, 1972 and for the three months and nine months ended September 30, 1972 were substantially less than the amounts indicated.

(e) April's business was subject to numerous factors which were adversely affecting its earnings in 1972. These factors included insufficient working capital, delayed receipt of income, uneven flow of supplies and rapid over expansion.

10. On or about November 10, 1972, April issued its interim report for the nine months ended September 30, 1972 in which it reported that its net income for the nine months ended September 30, 1972 was $1,135,398 (or 80¢ a share) and that its net income for the three months ended September 30, 1972 was $366.773 (or 26¢ a share).

11. On or about December 17, 1972, April announced that the aforesaid third quarter report was incorrect and that the net income per share for the nine months ended September 30, 1972 was $758,411 (or 54¢ a share) and that for the three months ended September 30, 1972 April had sustained a loss of approximately $14,000 (or 1¢ a share).

12. Adjustment of the third quarter earnings as described in ¶11 was based upon facts which were known, or in the exercise of reasonable diligence should have been known, to the defendants prior to September 10th.

13. On or about April 11, 1973, April announced that it had sustained a net loss of $252,270 (or approximately 25¢ a share) for the year ended December 31, 1972.

14. (a) Plaintiffs and the members of the class they represent acquired securities issued by April at prices artificially inflated by the false and misleading financial statements and predictions. When the facts concerning April's financial position and earnings were revealed, the price of its stock declined to its present price of approximately $2 a share.

(b) As a result of their acquisition of April stock, plaintiffs and the members of the class they represent have been damaged. They have each paid an artificially inflated price for the stock because of the false and misleading statements knowingly circulated or acquiesced in by each of the defendants.

15. The market price of April's stock was artificially inflated as a result of the financial reports, statements, releases, predictions and estimates given to securities analysts, brokers and others by April and the other defendants and by the written reports distributed by April which statements, as described above, were materially false and misleading. Defendants knew or, in the exercise of reasonable diligence should have known, that such reports were false and misleading.

Wherefore, plaintiffs demand judgment requiring defendants jointly and severally to pay the plaintiffs and the members of the class they represent a sum equal to the damages each of said persons sustained as a result of the wrongs alleged herein, together with the costs and disbursements of this action, including reasonable counsel and accounting fees and such other and further relief as may be just and proper.

Shatzkin and Cooper

By: /s/ Edward Labaton
A Member of the Firm
Attorneys for Plaintiffs
235 E. 42nd Street
New York, N.Y. 10017
MU 7-8800

ANSWER OF DEFENDANTS EXCEPT PARKER (Filed September 19, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
--------------------------------X

SAMUEL PARKINSON, as custodian for
ANDREW PARKINSON, JONATHAN STAEBLER
and PETER B. MYGATT,

Plaintiffs

-against-

APRIL INDUSTRIES, INC., ARTHUR FEDER,
ALEX M. PARKER, MORRIS DEMEL,
NATHAN APTEKAR and STANLEY W. SILVER,

Defendants

----------------------------------X

The defendants, except the defendant PARKER, answering the complaint herein, by their attorney, WILBUR SILVERMAN, Esq. alledges on information and belief:

1. Deny any knowledge or information, sufficient to form a belief thereof as to the allegations contained in paragraph marked 1, of the complaint.

2. Deny any knowledge or information, sufficient to form a belief thereof as to the allegations contained in paragraph marked 2, of the complaint.

3. Deny the allegations set forth in paragraph marked 3 of the complaint.

4. Deny the allegations set forth in paragraph marked 4 of the complaint.

5. Admits that APRIL is a Delaware Corporation operating and having an office in the Commonwealth of Puerto Rico, except as admitted, deny each and every allegations contained in paragraph 5 of the complaint.

6. Admits that the defendant APRIL had reported, prior to a restatement of the earnings, that it had earned 25¢ a share for the three months ending March 31,1972; 51¢ a share for the three months ending September 30,1972, or 80¢ a share for the nine months ending September 30, 1972. Except as herein admitted,

defendants deny each and every allegations set forth in paragraph 7 of the complaint.

7. Except as herein above admitted, deny the allegations set forth in paragraph marked 8 of the complaint.

8. Except as herein above admitted, deny the allegations set forth in paragraph marked 9 of the complaint.

9. Admit that on or about December 1972 defendant, APRIL, restated its earnings for the month September 30,1972, so as to report profits of 54¢ a share for the nine months ending September 30,1972 and a loss of 1¢ a share for the three months ending September 30,1972, and except as admitted defendants deny the allegations set forth in paragraph marked 11 of the complaint.

10. Deny the allegations set forth in paragraph marked 12 of the complaint.

11. Deny the allegations set forth in paragraph marked 14 of the complaint.

12. Deny the allegations set forth in paragraph marked 15 of the complaint.

AS AND FOR A SEPARATE AND COMPLETE DEFENSE

13. The defendants, and each of them, at all times referred to in the complaint,acted in good faith and had no knowledge that any statement made by any defendant was false or misleading.

WHEREFORE, defendants and each of them demands judgment dissmissing the complaint, together with the costs of this action and the defendants be awarded reasonable expenses and attorneys fee.

WILBUR G. SILVERMAN
Attorney for defendants (Except PARKER)
88-11 169th Street
Jamaica. New York

ANSWER OF DEFENDANT PARKER (Filed September 21, 1973) 

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

SAMUEL PARKINSON, as custodian for Andrew Parkinson, JONATHAN STAEBLER and PETER B. MYGATT,

Plaintiffs,

-against-

APRIL INDUSTRIES, INC., ARTHUR FEDER, ALEX M. PARKER, MORRIS DEMEL, NATHAN APTEKAR and STANLEY W. SILVER,

Defendants.

---x

ANSWER

73 Civ. 1887 (W.K.)

Defendant Alex M. Parker, by his attorneys, Dornbush Mensch Mandelstam & Schwartz, as his answer to the complaint, alleges:

1. Denies each and every allegation of paragraph "1" of the complaint.

2. Denies knowledge of each and every allegation of paragraph "2" of the complaint, except denies as to defendant Alex M. Parker that said defendant ever artificially inflated the earnings and prospects of April Industries, Inc., or by the use of false and misleading statements, or otherwise, manipulated the market place of April or violated the Securities Exchange Act of 1934 or any other statute or rule of law.

3. Denies each and every allegation of paragraph "3" of the complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation of para-

graph "4" of the complaint.



5. Denies each and every allegation of paragraph "5" of the complaint, except admits, upon information and belief, that April Industries, Inc. is a Delaware corporation with its principal offices in the Commonwealth of Puerto Rico.

6. Admits each and every allegation of paragraph "6" of the complaint.

7. Denies each and every allegation of paragraph "7" of the complaint.

8. Denies each and every allegation of paragraph "8" of the complaint.

9. Denies each and every allegation of paragraph "9" of the complaint.

10. Upon information and belief, admits each and every allegation of paragraph "10" of the complaint.

11. Upon information and belief, admits each and every allegation of paragraph "11" of the complaint.

12. Denies each and every allegation of paragraph "12" of the complaint.

13. Upon information and belief, admits each and every allegation of paragraph"13"of the complaint.

14. Denies each and every allegation of paragraph "14" of the complaint.

15. Denies each and every allegation of paragraph "15" of the complaint.

AS A FIRST AFFIRMATIVE DEFENSE

16. The complaint fails to state a claim upon which relief can be granted.

AS A SECOND AFFIRMATIVE DEFENSE

17. The Court lacks jurisdiction over the subject matter of the complaint.

AS A THIRD AFFIRMATIVE DEFENSE

18. Upon information and belief, the acts and transactions complained of occurred outside of the Southern District of New York and, accordingly, venue is improperly laid in said District.

WHEREFORE, defendant Alex M. Parker demands judgment dismissing the complaint, together with costs and disbursements of this action.

DORNBUSH MENSCH MANDELSTAM & SCHWARTZ

By: ______________________
A Member of the Firm
Attorneys for Defendant Alex M. Parker,
Office & P. O. Address
22 East 40th Street, New York, N. Y.
Tel: [212] 685-7400 10016

United States District Court
Southern District of New York

---

Samuel Parkinson, as custodian for Andrew Parkinson, Jonathan Staebler and Peter B. Mygatt,

Plaintiffs

-against-

April Industries, Inc., Arthur Feder, Alex M. Parker, Morris Demel, Nathan Aptekar and Stanley W. Silver,

Defendants

73 Civ. 1887 (WK)

Notice of Motion

---

S I R S:

Please take notice, that upon the annexed affidavit of Edward Labaton, sworn to October 18, 1973, and upon all the proceedings heretofore had herein, the undersigned will move this court on November 2, 1973 at Room 619, U. S. Courthouse, Foley Square, New York, N.Y. at 2:00 P.M. for an order declaring this action to be maintained as a class action under Rule 23(c)(1) FRCP on behalf of a class comprising plaintiffs and all other persons who purchased stock of April Industries, Inc. between June 1, 1972 and December 17, 1972, and for such other and further relief as may be just and proper.

Yours, etc.,

Dated: October 18, 1973

Shatzkin and Cooper

By: EDWARD LABATON
A Member of the Firm
Attorneys for Plaintiffs
235 E. 42nd Street
New York, N.Y. 10017

To: Dornbush Mensch Mendelstam
& Schwartz, Esqs.
Attorneys for Defendant
Alex M. Parker
22 E. 40th Street
New York, N.Y. 10016

Wilbur G. Silverman, Esq.
Attorney for Defendants,
except Alex M. Parker
88-11 169th Street
Jamaica, N. Y. 11432

United States District Court
Southern District of New York



---x

Samuel Parkinson, as custodian for Andrew Parkinson, Jonathan Staebler and Peter B. Mygatt,

Plaintiffs

against

April Industries, Inc., Arthur Feder, Alex M. Parker, Morris Demel, Nathan Aptekar and Stanley W. Silver,

Defendants

---x

AFFIDAVIT

73 Civ. 1887
(Judge Knapp)

State of New York )
) ss.:
County of New York )

Edward Labaton, being duly sworn, deposes and says:

1. I am a member of the firm of Shatzkin & Cooper, attorneys for plaintiffs, I submit this affidavit in support of plaintiffs' motion for an order pursuant to Rule 23 (c) (1) FRCP determining this action to be a class action.

Nature of Action

2. The complaint asserts that defendants artificially inflated the earnings and prospects of defendant April Industries, Inc. ("April") by the use of false and misleading statements and press releases and thereby manipulated the market price or April stock. The proposed class represents persons who purchased shares of stock between June 1, 1972 and December 18,1972, the period during which the statements were disseminated.

3. The complaint asserts that beginning in June 1972 and continuing through December 18, 1972, April issued financial reports, predictions and releases directly and through securities analysts with the intention that the statements made to the securities analysts be disseminated to the investing public and with the knowledge that the investing public would rely upon said reports as well as those disseminated directly by April. Among the statements disseminated were a prediction that April would have net profits of $1,890,000 in 1972 and a profit of $2,554,000 in 1973 and that earnings in the first, second and third quarters of 1972 were substantial. ($335,765 for the three months ended March 31, 1972, $431,860 for the three months ended June 30, 1972 and $336,773 for the three months ended September 30, 1972, or a grand total of $1,135,398 for the nine months ended September 30, 1972).

4. The complaint alleges that the aforesaid reports were false and misleading and that on December 17, 1972 April corrected its report for the nine months period ended September 30, 1972 showing a loss for the three months ended September 30th. On April 11, 1973, April announced that it had sustained a net loss of $250,270 for the year ended December 31, 1972.

5. Attached hereto as Exhibit A is a copy of a letter from the National Association of Securities Dealers, Inc. showing the trading volume between June 1, 1972 and December 15, 1972. I was informed by telephone that the volume figures have two zeros omitted so that the total volume in that period was 457,200 shares.

## The Requirements of Rule 23

6. Rule 23(a)(1) requires that the class is so numerous that joinder of all members is impractical. Based upon Exhibit A, it is apparent that there were hundreds, if not thousands, of purchasers of April stock in the period indicated.

7. Rule 23(a)(2) requires that the false and misleading statements made raise questions of law or fact common to the class. Here, that requirement is plainly met in that the statements made which plaintiffs claim to be false and misleading were disseminated in writing by the securities analysts to whom they were made. Attached hereto as Exhibits B, C, D, E and F are reports of various securities analysts and financial reporters issued between August and October 1972. We believe that defendants are the source of the information contained in these reports. The reports are substantially similar in that they estimate earnings for the year ended December 31, 1972 in the range of $1.25 to $1.40 per share. Some of the reports estimate earnings for 1973 in the range of $1.80 to $2.00 a share. The reports uniformly paint a glowing picture of the prospects of April in the Puerto Rican housing market and indicate a highly efficient problem-free company with great prospects for growth.

8. The other aspect of the complaint relates to the report for the period ended September 30, 1972. Attached hereto as Exhibits G and H respectively are the reports

disseminated on or about November 10, 1972 showing net income of $366,773 in the three months ended September 30, 1972 and a statement issued on or about December 15, 1972 and disseminated in the financial press on or about December 17, 1972 correcting the first September 30th statement. 

9. The issues of fact, common to the class, are whether the statements made by defendants to the securities analysts who prepared the reports disseminated to the public (such as Exhibits B to F) were false and misleading and whether Exhibit G, the nine months report for the period ended September 30, 1972, was false and misleading and whether as a result of these false and misleading statements the price of April was artificially inflated and violated the Securities Exchange Act of 1934 and the rules thereunder.

10. Rule 23(a)(3) requires that the claims of the plaintiffs are typical of the claims of the class. Here, the plaintiffs made purchases on the open market and allege that they made them in reliance upon the generally optimistic reports disseminated directly and indirectly in writing by defendants and in the belief that the price of April stock was based upon accurate information.

11. Rule 23(a)(4) requires that the plaintiffs will fairly protect the interests of the class. Plaintiffs' interests are in no way antagonistic to the interests of absent class members. In construing Rule 23, the courts have held that among the most important elements determining adequacy of representation is the experience of counsel. Deponent is in charge of this litigation and has for more than ten years been engaged primarily in the field of

securities law and corporate litigation. I have represented plaintiffs and defendants in numerous cases under the securities laws including class actions in this court. In addition, for the last three years I have participated as a faculty member in Practising Law Institute programs and shareholder suits and class actions and have chaired a sub-committee of the Committee on Federal Courts of the Association of the Bar of the City of New York dealing with various aspects of Rule 23.

12. Rule 23 (b) (3) requires that a class action be superior to other available methods for a fair and efficient adjudication of the controversy. This action is a classic example of the kind of situation for which a class action was designed. Defendants are alleged to have perpetrated a serious fraud upon the market affecting hundreds or thousands of purchasers of April's securities, all damaged in the same manner. The acts complained of affect all of the class members equally and questions of law or fact common to the members of the class clearly predominate over any other questions, such as damages, affecting only individual members. To my knowledge, members of the class have not expressed an interest in individually controlling the prosecution of separate actions and I know of no other actions concerning this controversy commenced by members of the class on an individual basis.

13. Finally, there are no extreme or unusual difficulties likely to be encountered in the management of this class action since, again, the common questions of

law and fact extend to all of the members of the class. The problems presented in the conduct of this class action litigation are no different from the problems presented in innumerable other actions arising under the securities laws determined to be proper class action in the past.

Wherefore, I respectfully request that this court declare this action to be a class action.

EDWARD L...

Edward Labaton

Sworn to before me this

18th day of October, 1973.

NOTARY ...
Qualified in Nassau County
Certificate filed in New York County
Term Expires March 30, 1974

EXHIBITS ANNEXED TO FOREGOING NOTICE OF MOTION AND AFFIDAVIT

# NASD

NASDAQ

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

2 BROADWAY • 8th FLOOR • NEW YORK • NEW YORK 10004

June 4, 1973

Mr. Edward Labaton
Shatzkin & Cooper Attorneys
235 E. 42nd Street
New York, New York 10017

Dear Mr. Labaton:

As per your request dated May 25, 1973 the information regarding APRIL INDUSTRIES, Inc. is as follows:

| DATE 1972 | VOLUME | DATE | VOLUME |
|---|---|---|---|
| Jun 1 | 3 | Oct 6 | 59 |
| 2 | 186 | 13 | 107 |
| 9 | 228 | 20 | 139 |
| 16 | 158 | 27 | 100 |
| 23 | 94 | Nov 3 | 175 |
| 30 | 82 | 10 | 222 |
| Jul 7 | 99 | 17 | 181 |
| 14 | 78 | 24 | 374 |
| 21 | 78 | Dec 1 | 275 |
| 28 | 279 | 8 | NOT IN NASDAQ |
| Aug 4 | 494 | 15 | NOT AVAILABLE |
| 11 | 287 | | |
| 18 | 202 | | |
| 25 | 231 | | |
| Sep 1 | 70 | | |
| 8 | 70 | | |
| 15 | 91 | | |
| 22 | 63 | | |
| 29 | 111 | | |

If you should require any further information, please do not hesitate to contact me.

Very truly yours,

Richard Hurwitz

Richard Hurwitz
NASDAQ Department

RH:bat

B-86

Exhibit A

# APRIL INDUSTRIES, INC.

**By ANTHONY LUDOVICI**

**The homebuilding industry in Puerto Rico has been growing at a rapid pace over recent years, and currently represents about 10 per cent of the island's GNP. In 1967, residential construction was valued at an estimated $225 million. The estimated value of homebuilding in 1975 is projected to be about $530 million. Today's subject, APRIL INDUSTRIES, INC., a Puerto Rico residential building company, is making profitable strides in this area. The company is unique in that it employes no subcontractors but rather engages in all aspects of home construction: from site planning and development through the actual erection and finishing. Profit margins are better than average. Earnings for 1972 are expected to be about $1.40 per share on revenues of $10 million. Management forecasts revenues for 1973 to be in the vicinity of $16.5 million with earnings projected to be about $2.40 per share.**

Housing starts rose strongly during the month of August to an annual rate of 2,457,000 units, up 12.2 per cent over the previous month and the highest increase scored since last February. All the more important, however, is that new permits reached record levels, a rise in this index usually augurs well for the future trend of the home-building market. On the basis of the August statistics, housing starts may not level off to as marked a degree as had been previously expected.

Arthur Feder
President

This writer is particularly attracted to APRIL INDUSTRIES, INC. (APRIL OTC Bid 10½), a company which reported very impressive results for the three-months and six months-periods ended June 30, 1972.

Three months earnings for the period ended June, 1972, rose 98.9 per cent to $431,860 from $217,128 in the comparable year-ago period, while per share earnings increased to 31 cents from 17 cents for a gain of 82.3 per cent. Revenues for the same period rose to $2.2 million from $1.2 million the year previous. Because of these glowing quarterly statistics, this writer attended a meeting last week with management of APRIL INDUSTRIES and a group of financial analysts to find out more. This publication learned that the successes scored by this fledgeling company which has only been public since February 3, 1972, are primarily the result of a superb managerial team, under the direction of the company's president, Arthur Feder.

## The Company

The history of APRIL INDUSTRIES can be traced back to a Utah mining company which was formed in 1916. Through a series of acquisitions, a few name changes, and the eventual acquisition of the Futura Company, which consisted of a group of corporations that were primarily engaged in the construction and sale of single family homes in Puerto Rico, APRIL INDUSTRIES, INC. came into being. The Futura acquisition also included a realty company. The company adopted its present title in April, 1971, when it was organized as a Delaware corporation domiciled in Puerto Rico.

Its principal activity is the planning and building of low to moderately priced housing developments on the island of Puerto Rico.

We learned that the impressive profit margins which attracted this writer to the company stem primarily from low labor costs, management's ability to produce on time, and the elimination of the added costs involved with subcontractors.

Rather than acting as a general contractor with supervising a group of subcontractors, APRIL INDUSTRIES, INC. engages in virtually all aspects of home construction: from site planning and development through the actual erection and finishing.

APRIL INDUSTRIES, INC. is currently involved in the construction and development of six residential communities in various areas of Puerto Rico, ranging from low-priced to luxury-priced homes. The company's involvement in these projects generally fall into one of four concepts:

1 - turnkey housing developments for the Puerto Rican housing agency CRUV.

2 - single or multi-family homes for private buyers.

3 - As general contractor for the construction of rental or cooperative multi-family projects being constructed under Section 236 of the National Housing Act of 1968. These units are usually designated as low income or moderate income units.

4 - management consultants.

During 1971, new housing construction in Puerto Rico rose nearly 20 per cent and shows no signs of waning. The desire of both the Puerto Rico and United States governments to improve substandard living conditions which existed in some parts of Puerto Rico enhances the outlook for the housing market there. The influx of industrialization programs to the island under "Operation Bootstrap", which offers companies seventeen-year tax advantages, has helped to improve the Puerto Rican economy, and to provide Puerto Rican citizens the economic means of purchasing decent housing.

An important factor for Puerto Rico homebuilding companies is that the cost of construction in terms of labor is considerably less than in the United States. But prices for Puerto Rican homes are comparable to those in the United States. This, combined with lower labor costs, tends to enhance the profits of the builder particularly those of APRIL INDUSTRIES, INC.

## New Developments

A planned 384-unit high-rise condominium complex is expected to begin construction in downtown San Juan in 1973. The project will consist of commercial tenants on the ground floor, with residential units above. The selling price for these condominiums are expected to start at approximately $24,000 for studio apartments and to graduate to $40,000 for larger units.

The company also acquired a manufacturer of terrazzo floor surfacing, a product used extensively in many of APRIL INDUSTRIES' developments. The acquisition was made for $400,000 in cash to be paid over a three-year period. In addition, a maximum of 150,000 shares of common stock is also to be paid over the three year period, but the issuance of the shares are predicated on earnings of $1,350,000 by the terrazzo company over a three-year period beginning June 1, 1972. According to Mr. Feder, the terrazzo company which pays no income taxes, will not make any contribution to earnings in 1972, but he expects that it will account for some $150,000 to $500,000 in profits in 1973, based on projected revenues of almost $2 million.

More recently, the company announced that it has agreed in principle to acquire the Associated Marble Industry, Inc. which is engaged in the production and sale of marble in the United States and Italy. This company owns and operates its own marble quarry in Italy and also leases mineral rights from a number of other quarry owners. The terms of the acquisition call for APRIL INDUSTRIES to issue 150,000 shares over a five year period with payments to begin at the end of 1973. The purchase price is subject to adjustments in the event that net earnings of Associated Marble do not reach an aggregate of $2 million by the end of 1976. Mr. Feder told your OTC Chronicle reporter that the marble company does not pay any taxes and its profit margins are a staggering 33 per cent. He envisions overall volume for 1973 to be in the vicinity of $1.5 million with net income of $500,000.

In replying to the queries from a number of analysts regarding these seemingly unbelieveable margins Mr. Feder insisted that the margins are accurate.

APRIL INDUSTRIES has expanded its operations into the United States by acquiring a 200-acre site near New Haven, Connecticut, currently zoned for 200 single-family homes. The company has filed an application to have the land rezoned to accomodate approximately 2,000 condominium units at an average selling price of $40,000. If the rezoning is effected, the project upon completion would have an estimated value of about $80 million.

In Bayamon, Puerto Rico, the company recently acquired a project which involves the construction and delivery of 200 garden apartment units pursuant to a government turnkey contract; when completed, it will have a toal value of $3.4 million. The company also plans a 650 single-family home project in Las Piedras, Puerto Rico which, upon completion will have an estimated value of $12 million.

Based on projects underway, those currently contracted for, and those which are in the planning stage, APRIL INDUSTRIES, INC. has enough work on hand to keep it active for the next three years.

According to Arthur Feder, the company's after-tax profit margins for 1972 will be in the vicinity of 19 per cent - 20 per cent; this is an unusually high margin of profit for any industry. When asked by this reporter the reasons for these exceptionally high profit margins, Mr. Feder highlighted the fact that APRIL INDUSTRIES pays $1.60 to $2.20 per hour for labor and does not subcontract any of its work. These labor costs are well below United States standards. He stated further that he has surrounded himself with a capable managerial and operational team whose expertise in the building industry is second to none. He said that "Our team of management and construction specialists have forged a powerful and unique construction company. We have achieved a maximum degree of operating, self-sufficiency in the field". He went on to explain that because they employ no subcontractors, they are able to set and meet scheduling that other organizations would not dream of attempting. Its crews

Continued on Page 18



## FEATURES IN THIS WEEK'S ISSUE

MARKET AT A GLANCE .......... Anthony Ludovici 1
O-T-C MARKET ROUNDUP .......... William D. Scanlon 1
POWER CONVERSION BLACKOUT .......... Marilyn Much 1
APRIL INDUSTRIES, INC. .......... Anthony Ludovici 2
TRANS-AIR FREIGHT SYSTEM .......... Edward L. Brennan 3
PIC 'N' SAVE CORPORATION PROFITS THROUGH BARGAINS! .......... Louis Guiducci 4
LAWSON PRODUCTS, INC. .......... Ira U. Cobleigh 5
GALAXY CARPET MILLS .......... Oliver T. Connors 6
VISUAL GRAPHICS CORP. SHOWS GROWTH TREND .......... Wilbur Beane 8
THE BOND MARKETS .......... Jim Reilly 9
THE OTC RESEARCH REPORT CORNER .......... Daniel J. Berrell 10
WHAT'S THE ANSWER? .......... David G. Ginberg 15
O-T-C OATIS .......... Edgar Allen, Jr. 44
OPTION WRITING GOALS .......... Lawrence Ross 44

OTC Personnel .......... 7
Mergers & Acquisitions .......... 12
Corporation News .......... 13
New Issue Prices .......... 16
Earnings .......... 17
Dividends .......... 18
O-T-C Stock Quotations .......... 19
SEC Registrations .......... 30

## [illegible] MARKET INDICATORS

| | Current Week | Last Week | Year Ago |
|---|---|---|---|
| Indices (10-12) | | | |
| NASDAQ-IA | [illegible] | 120.47 | 112.[illegible] |
| NQB-IA | 581.97 | 5[illegible].33 | 474.[illegible] |
| DJIA | [illegible]37.46 | 944.30 | 8[illegible].55 |
| Whsl. Price | 325.63 | 324.29 | 291.16 |
| Bank Rates (%) (10-12) | | | |
| Broker Loans | 5¾ | 5¾ | 6.00 |
| Treas. Bill Rates (%) (10-12) | | | |
| 3-Months | 4.70 | 4.68 | 4.35 |
| 6-Months | 5.10 | 5.20 | 4.45 |
| Member Banks Reserves (Wkly. Avg. M's $'s) (10-11) | | | |
| Excess | 373 | 268 | 46 |
| Borrowed | 5[illegible]5 | 438 | 449 |
| Free | -162 | -170 | -403 |
| Large Commer'l Banks (M's $'s) (9-22) | | | |
| Securities Loans | N.A. | 11,299 | 3,464 |

Sources: National Assn. of Securities Dealers (NASDAQ Industrial Avg.); National Quotation Bureau (NQB Industrial Avg.); Dow Jones & Co. (DJ Industrial Avg.); Dun and Bradstreet Wholesale Commodity Index; O-T-C Information Bureau; Morgan Guaranty Trust and Federal Reserve Board

## [illegible]

### 15 Issues

| Stock | NASDAQ Symbol | Bid 1-3-72 | Prices 10/16/72 |
|---|---|---|---|
| Amer Nat'l (Tex) | | 9¼ | 9⅝ |
| Amer Re-Ins (NY) | ARNY | 39½ | 40¼ |
| Combined Ins Co. | COMB | 22⅛ | 21⅛ |
| Cont Gen Corp | CGEN | 74 | 73⅛ |
| Crum & Forster Com. | CRMF | 29¾ | 30 |
| Farmers New World Life | FNEW | 59½ | 55⅛ |
| Fidelity Union Life | FUNI | 38¼ | 3[illegible] |
| Franklin Life | FLIF | 28½ | 2[illegible] |
| Gt Amer Nat'l | GTIL | 25⅜ | 21[illegible] |
| [illegible] Employees | GEMC | 36¾ | 36¾ |
| [illegible] | [illegible] | 12 | 1[illegible] |

## DIVIDENDS

| Name of Company | Per Share | When Payable | Holders of Rec. |
|---|---|---|---|
| Allegheny Beacon, Inc. (s-a) | 12[illegible]c | 10-[illegible] | 9-25 |
| American Welding & Mfg. Co. | [illegible] | 11-1 | 10-6 |
| Booz Allen & Hamilton (quar) | 8c | 10-[illegible] | 10-6 |
| Buckeye Steel Co. (increased quar) | 10c | 11-15 | 11-1 |
| Central Vermont Public Service (quar) | [illegible]c | 11-[illegible] | 10-31 |
| Commercial Clearing House (incr. quar) | $[illegible] | 10-[illegible] | 9-[illegible] |
| Culbro Co com (quar) | 6c | 10-16 | 9-29 |
| Detroit & Canada Tunnel (quar) | 32½c | 10-30 | 10-20 |
| Friendly Ice Cream Corp (s-a) | 2c | 10-27 | 10-2 |
| Frisch's Restaurants, Inc. (quar) | 7½c | 10-16 | 10-5 |
| George Washington Corp. (quar) | 3c | 11-21 | 10-31 |
| Gleason Works (quar) | 11c | 10-31 | 10-10 |
| Graphic Controls Corp (resumed) | 7c | 11-1 | 10-17 |
| Hall (Frank B.) & Co. (quar) | 6¼c | 10-19 | 10-5 |
| Hyster Co (quar) | [illegible]c | 10-[illegible] | 10-2 |
| Kellwood Co (quar) | [illegible] | 12-5 | 11-16 |
| Kent [illegible] Co (resumed) | 6c | 11-1 | 10-6 |
| Knape & Vogt Mfg. (quar) | 17½c | 1[illegible]-1 | 11-[illegible]7 |
| Martha White Food (incr.-quar) | 6c | 11-[illegible] | 11-1[illegible] |
| Mary Kay Cosmetics | 4c | 11-6 | 10-25 |
| Merchants, Inc (quar) | 15c | 10-[illegible] | 10-2 |
| Morrison, Inc (quar) | 18c | 10-31 | 10-13 |
| Morris Knudsen, Inc (stk div) | 5% | 12-1 | 11-1 |
| Olga Company (quar) | 10c | 11-3 | 9-29 |
| Peterson Howell & Heather (quar) | 6¼c | 10-31 | 10-13 |
| Porter (H.K.) Co 5½% pfd (quar) | $1.37½ | 10-31 | 10-9 |
| Rice Food Markets (quar) | 5c | 10-16 | 10-3 |
| Rival Mfg Co (quar) | [illegible]c | 11-1 | 10-16 |
| Extra | 2[illegible]c | 12-20 | 12-1 |
| Russell Stover Candies (incr-quar) | $0.2[illegible] | 11-1 | 10-15 |
| Scholastic Magazines (quar) | 6¼c | 10-31 | 10-15 |
| [illegible] Corp (stock div) | 3% | 11-[illegible] | 11-10 |
| Strawbridge & Clothier (quar) | 30c | 11-1 | 10-2 |
| United Virginia Bankshares (quar) | 2[illegible]c | 10-[illegible] | 9-[illegible] |
| Vanderbilt [illegible], Inc (quar) | 10c | 10-[illegible] | 10-6 |
| Werner Continental [illegible]% pfd (quar) | $0.[illegible] | 10-[illegible] | 9-30 |
| Wiley (John) & Sons (quar) | [illegible] | 10-[illegible] | 10-6 |
| Winter (Jack) Inc (resumed) | 5c | 10-31 | 10-[illegible] |
| Wisconsin Power & Light (quar) | 35c | 11-15 | 10-31 |
| Wyoming Bancorporation | 5c | 10-[illegible] | 9-[illegible] |

## Over-The-Counter Stock Issues Recently Suspended

# APRIL INDUSTRIES, INC.

Continued from Page 2

are trained in their own shops, and the company's extensive equipment inventory meets all the company's needs.

For the year ended December, 1971, APRIL INDUSTRIES reported overall revenues of $1.9 million vs. $3.9 million a year previous. Net income, after taxes of approximately 40 per cent, reached $935,962 or 77 cents per share in 1971 based on 1,212,261 shares outstanding, this compared to net income of $218,650 or 31 cents per share the year previous.

In 1972, revenues and net income continued in an upward direction. For the six months period ended June, 1972, revenues soared to $1 million vs. $1.9 million in the first half of 1971. Net income during the same period advanced to 55 cents per share based on 1,356,240 shares outstanding vs. earnings of 29 cents per share on 1,218,125 shares outstanding at the end of June, 1971.

Mr. Arthur Feder projects revenues for 1972 to be in the vicinity of $10 million and after-tax profits to be close to $1.95 million or roughly $1.40 per share on the 1,356,240 shares currently outstanding.

Mr. Feder went on to say that in 1973 overall revenues from the projects already on stream should be in the vicinity of $16.8 million. Barring any unforeseen adverse developments, he anticipates earnings in 1973 to be in the vicinity of $2.40 per share.

Mr. Feder told analysts and brokers at the meeting that APRIL INDUSTRIES, INC. should be generating revenues of some $40 million in 1974. However, profit margins are bound to contract and it is not easy to project earnings with any fair degree of accuracy. There are 325,000 shares in the hands of the public, the balance is controlled by officers, directors, and insiders.

## NASDAQ: Daily Closing OTC Stock Price Indices

(100 equals February 5, 1971)

| | Composite | Industrial | Bank | Insurance | Other Finance | Transportation | Utility |
|---|---|---|---|---|---|---|---|
| No. of Issues | 2304 | 1732 | 92 | 141 | 379 | 66 | 104 |
| Sept. 1 | 130.70 | 133.65 | 114.83 | 13[illegible].72 | 143.30 | 120.88 | 94.41 |
| Sept. 5 | 130.33 | 132.95 | 115.14 | 13[illegible].41 | 143.17 | 120.19 | 94.42 |
| Sept. 6 | 129.63 | 131.91 | 115.26 | 13[illegible].62 | 142.64 | 119.29 | 94.41 |
| Sept. 7 | 129.21 | 131.37 | 114.97 | 134.[illegible] | 142.45 | 119.18 | 94.14 |
| Sept. 8 | 129.13 | 131.24 | 114.85 | 134.77 | 142.38 | 119.65 | 94.28 |
| Sept. 11 | 128.26 | 129.90 | 114.67 | 134.42 | 141.67 | 118.50 | 93.98 |
| Sept. 12 | 127.18 | 128.33 | 114.15 | 133.67 | 140.85 | 118.02 | 93.34 |
| Sept. 13 | 127.51 | 128.77 | 114.08 | 134.03 | 141.14 | 118.60 | 93.72 |
| Sept. 14 | 127.58 | 128.62 | 114.39 | 13[illegible].81 | 141.36 | 118.73 | 93.60 |
| Sept. 15 | 127.67 | 128.80 | 114.49 | 13[illegible].64 | 141.78 | 118.61 | 93.54 |
| Sept. 18 | 127.61 | 1[illegible].53 | 114.75 | 13[illegible] | 1[illegible].03 | 118.73 | 93.13 |
| Sept. 19 | 127.42 | 127.97 | 115.07 | 13[illegible].77 | 1[illegible].34 | 118.[illegible] | [illegible].72 |
| Sept. 20 | 127.51 | 127.78 | 115.50 | 133.61 | 143.00 | 118.45 | 92.65 |
| Sept. 21 | 1[illegible] | 127.[illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |

EXHIBIT C - RESEARCH REPORT

FIRST HARLEM SECURITIES CORPORATION Members of the New York Stock Exchange Inc.



144 West 125th Street / New York, N.Y. 10027 / 212-865-4000

# Research Report
# April Industries, Inc.

Exhibit C

Leon E. Simcoe
October 25, 1972

# APRIL INDUSTRIES, INC.

| Approx. | Earnings Per Share | | | | P/E Ratio | | |
|---|---|---|---|---|---|---|---|
| Price | 1971 | 1972E | 1973E | Dividend | 1971 | 1972E | 1973E |
| 9 7/8 | $0.77 | $1.30 | $1.80-$2.00 | None | 13x | 7.7x | 5.3x |

CAPITALIZATION

Long Term Debt: $ 141,259
Common Stock: 1,445,125 Shares
Float: Approximately 400,000 Shares

April Industries is a rapidly growing builder-developer of single-family homes and garden apartments in Puerto Rico. Recently, April has also become involved in projects on the U.S. mainland. Puerto Rican construction activities have been steadily expanding. We estimate that even if construction outlays flatten out at current levels, by 1975 April's share of the island's home-building activity will more than double from its current level of under 4%. April currently has an inventory of more than 700 acres of land which is constantly increasing in value. This is enough to satisfy home building activity of 1,000 units a year for the next seven or eight years. April is unique in that it maintains its own well-integrated work force and does not use sub-contractors. Largely reflecting this latter factor, April has been able to attain aftertax profit margins of approximately 19%.

In 1968, its first year of operations, April reported sales of about $700,000. During the past three years revenues have expanded from $1.3 million to an estimated $10 million in 1972. Profits have more than kept pace, increasing from $21,000 in 1969 to an estimated $1.9 million net aftertaxes in 1972. At approximately eight times 1972 estimated earnings of $1.30 per share and under six times 1973 estimated earnings of $1.90 per share, April's past record and future potentials appear to be conservatively valued and purchase is recommended for intermediate and long term capital appreciation.

We believe April Industries to be an attractive investment vehicle for the following reasons:-

(1) April is believed to be the most rapidly growing home-builder on the island of Puerto Rico. The Puerto Rican economy is itself exhibiting strong growth.

(2) A larger percentage of the company's revenues is expected to be generated by sales to private buyers. This should help maintain, or possibly even increase existing pre-tax margin levels, as private sales tend to be more profitable than turnkey contracts. In 1971 the latter generated approximately 70% of the $4.9

million in revenues. In 1972 this should decline to approximately 50%, and in 28a
1973, to roughly 30%.

(3) April has been involved in a co-venture with Development Corporation of America, a Florida based home-builder. The agreement entitles April to receive 60% of any profits while assuming only 50% of possible losses. April's first half results were achieved despite incurring a loss from the joint venture. Over the balance of the year as more houses are built, we believe that this situation will be reversed and the profit performance improved substantially. There could be a substantial contribution in 1973 from the DCA program alone.

(4) A high-rise office and condominium structure to begin later this year which should have a significant effect on 1973 and 1974 earnings.

(5) April's acquisition policies, which could greatly expand the profit base as well as substantially reduce costs through forward integration - in particular, the recent announcements of the acquisition of a group of companies engaged in the manufacture and sale of terrazo floor surfacing, and an Italian marble company. April acquired both companies on favorable terms which are contingent upon both companies earning a stipulated amount over a period of three to five years. Management estimates that the combined earnings of these companies in 1973 could be in the vicinity of $1 million net of taxes, as both companies are expected to be tax free.

(6) April's first states-side project involved the purchase of 200 prime acres of land near New Haven, Connecticut. The company purchased this land at what it believes to be reasonable prices. It is currently involved in an attempt to rezone the land, which, if granted, would enable April to build between 2,000 and 2,500 condominium apartments on this site. Comparable apartments are selling for upwards of $40,000 each. April believes the value of this land to be significantly higher than their purchase price of $300,000 for the 200 acres.

(7) The constantly increasing value of April's land inventory constituting some 700 prime acres, none of which requires rezoning.

(8) April is the only home-builder on the island to do virtually all its own construction. The company employs its own labor force and is involved in all aspects of construction from original site selection to final installation and finishing.

(9) The housing market is highly fragmented in Puerto Rico; despite April's rapid growth, the company still accounts for under 5% of new one-family and multi-family housing construction.

(10) Through a unique method of ultra high frequency radio/telephone communication, management is constantly attuned to all of its island construction activities, and can send men and materials from one project to another at a moment's notice. In this manner, April has demonstrated its ability to manage geographically diverse projects containing a broad mix of divergent housing units.

## THE ECONOMIC ENVIRONMENT OF PUERTO RICO

Puerto Rico is 3,435 square miles, 100 miles long by 35 miles wide. Its physical characteristics include a mountainous interior with the highest peak 4,400 feet above sea level, and a fertile coastal plain. The total population is

approximately 3,000,000. The population of its major city, San Juan, including the metropolitan area, is approximately 1,000,000. Its density of nearly 800 persons per square mile makes it one of the most densely populated countries in the world. Since 1952, it has been a self-governing Commonwealth. Residents of Puerto Rico are subject to Commonwealth rather than federal income taxes. 29a

The economy of Puerto Rico has expanded at a rapid rate during the last decade. U.S. industry was given inviting tax concessions and this factor, combined with the availability of a low cost labor force in a climate where weather is not a limiting factor, have spurred capital investment and brought about a commensurate rise in per capita income. The U.S. government seems dedicated to making Puerto Rico the showcase of Latin America. The result has been a housing market which has shown dramatic increases in new construction during the past half dozen years.

The annual value of residential construction on the island is estimated at around $400 million. The present annual construction rate of 23,000 units constitutes primarily private dwellings with only about 20% being government sponsored public housing. Home-building presently accounts for approximately 10% of the island's gross national product. In our opinion, even if the level of overall home-building remains relatively flat over the next three years, April should be producing new dwelling units at a rate of 2,000 a year, and should account for approximately 10% of the island's new housing units by that time.

THE COMPANY

The company assumed its present identity through the consolidation of several closely-allied Puerto Rican construction operations. In June 1971, April-Utah, the predecessor company, acquired a group of corporations under the name "Futura;" these were engaged in the construction and sale of single-family houses in Puerto Rico in the three years from 1966 to 1969.

The company was originally engaged in the building of low to medium priced housing developments in Puerto Rico. Recently, the range of construction activities has expanded, and April now also builds luxury single-family units containing as many as five bedrooms and three bathrooms.

Due in part to the tropical climate in Puerto Rico, April's housing units are generally built of reinforced concrete and plaster exterior walls with concrete block and plaster interior partition walls. In the main, these units consist either of single-family homes or garden apartments, and are constructed in buildings of two to four stories. In addition, the company has also gone into the construction of moderately priced high-rise condominiums.

The only construction service the company is not engaged in pertains to the ownership and operation of a cement facility. There are several reasons April has avoided this area. Firstly, competition is extremely high in Puerto Rico; secondly, the return on investment is too small and does not meet April's investment criteria; and thirdly, the company feels that the prices it pays for cement are reasonable.

April has attained a high degree of integration. Instead of acting as a general contractor in charge of a group of sub-contractors, April is involved in every facet of home-building, from the initial planning to site selection and actual construction and finishing of the project. Through quantity production of several

hundred or more homes, April is able to spread its fixed [illegible] a larger number of units, thereby lowering its cost per unit. In addition, [illegible] for new Puerto Rican homes are on a comparable scale to the U.S. market, yet the cost of construction in terms of labor and materials is considerably less. There is a limited supply of good housing while demand is at a high level. April's labor force now numbers over 1,000 men. Home-building can accurately be described as labor intensive. In this type of occupation the availability and producitivity of labor determine the extent of profitability for the home-builder. Unions are not as powerful or as well organized in Puerto Rico as in the U.S. More importantly, they do not tend to act together or stick together. Despite this fact, April's workers are well paid; the minimum wage in Puerto Rico is $1.60 an hour, but April's relatively unskilled workers make $2.00 to $2.25 an hour, and often work for 12 hours a day collecting substantial overtime pay. 30a

April delivers fixed price turnkey projects to CRUV (Puerto Rico Urban Renewal and Housing Corporation). April also delivers houses under sections 235 and 236 of the National Housing Act of 1968. For the most part these involve low and moderate income single-family homes and also multi-family dwelling units.

## APRIL'S ON-GOING PROGRAMS

### (1) Manati - Villa II and Villa III

This project is located approximately 35 miles west of San Juan. It is composed of semi-attached one-family houses and garden apartments. It was originally to contain a total of 420 homes, 300 of which were to be delivered to the government pursuant to a turnkey arrangement. In 1971, April completed 210 units and this year will complete the balance of 210 units. The company still has room to build 142 more houses on this property. A new turnkey arrangement is expected shortly and construction on the balance may start this year. On units completed, April got the contract with a bid of $16,300 despite the existence of a lower bid from a competing builder of $14,750 per unit. April's success can be ascribed to its record of quality construction and performance within an alloted time span. These projects are estimated to net April $5,000 before taxes per $16,300 home delivered.

### (2) Manati - (Arius) Hardinas De Manati

A connecting road separates this project from Villa II and Villa III. There are 210 units subject to a turnkey arrangement, all begun this year. The entire 210 units will be delivered in 1972. These units are four stories high and constitute 21 buildings with ten units per structure. Nineteen of the 21 are already finished. This contract will be completed one year ahead of schedule. In addition, April's plans call for the construction of another 36 single one-family houses. The project is valued at $3½ million with a per home price of $15,300.

### (3) Bayamon - Co-Venture With DCA

The initial agreement provided for the building of 600 houses; however, April will construct as many as 1,100 on this property. The project is currently losing money (due to leveling and earth moving expenses). In addition, until recently, April was delivering homes at the old prices approximately 10% below the current price. As many as 90 homes may be delivered on this basis. Another important reason for the loss may be termed "clean-up" expenses. When April took over the project, contractors were fired and considerable personnel changes took place. After the first 200 homes are completed, profitability should be in the

neighborhood of $4,000 - $6,000 per house. These houses are not subject to turnkey; they are private, single-family homes in the price range of $21,000 to $24,000 per unit. In 1973 April anticipates the completion of 300 to 350 units. Some of these units may be classified as middle-class homes in the $35,000 - $38,000 category. Under the terms of the agreement with Development Corporation of America, April gets 20% of the profits off the top for management, and the balance is split 50-50. April's share of any losses cannot exceed 50%.

(4) Toa Alta

The Toa Alta property is a joint venture in which the company is currently purchasing a 50% interest at a rate of 40 acres at a time. April has an option to purchase the other 50% at $10,000 per acre. The total area comprises 340 acres. This quantity of land should be able to accommodate 2,000 units on a single-family basis as well as some industrial units. April will begin purchasing the land 40 acres at a time.

(5) Bayamon - Sierra Linda

In Bayamon, April is involved in a new government turnkey project that will eventually house approximately 200 families. The earth movement, which has just been completed, was accomplished in about four weeks. Completion of this project is scheduled for mid-1973. The total value of the project is expected to be in the neighborhood of $3,330,000, and April anticipates making over 30% profit on a pre-tax basis. April believes that completion of the project can be accomplished in eight to ten months.

(6) Guaynabo

April purchased 4½ acres at a cost of $1,775,000 in the new business district of San Juan, called Hato Rey. On this site April plans to erect a 21-story condominium on top of a 12,000 square foot base to be used for professional offices. Construction is expected to commence shortly and should take approximately two years to complete. The condominium units will sell for $25,000 - $32,000 each, according to floor and size of apartment, etc. The project is valued at $15 million, on which April estimates its profit to be in the area of $3 - $4 million.

(7) Las Piedras

The Las Piedras property acquired in March of 1972 was originally zoned as a light industrial development. April has received a change in zoning to mixed density housing. The property consists of one-30 acre parcel, with an option on another 40 acres. The price per acre is $5,500, and April is planning to build 7½ houses per acre (one-family four-story combination). On the original 80 acres, a favorable rezoning judgment was received. The project is FHA financed under a Section 235 government subsidy. April has been verbally told that they will get the 235 classification which means that each individual prospective homeowner places a down payment of $200 and the government finances the balance. There are certain restrictions under this section of the code; the income for a family of four may not exceed $5,000 per annum for eligibility. Completions are expected to be spread over the next three years at a rate of 200 - 300 units per year. This type of housing takes more time than a turnkey; credit checks must be made and there is a lot of red tape until completion and possession by the new owner. The property is well situated; there is considerable local industry in the area and a four-lane divided highway connects with the property.

32a

(8) Cagua

These units are subject to a 236 classification. This differs from 235 in that the government buys the land and owns the property, and the home-builder's role is that of general contractor. The price is fixed at a level about 6 to 8% above expenses. This is the only 236 project April is involved in, and most probably the company will not solicit more due to the low level of profitability. The units sell for about $12,000 without the land. Construction began in 1972 on 304 units and will be completed before the year is out. The contract originally specified 24 months but April will complete it in half that time. The company should net approximately $½ million pre-tax on the Caguas units when completed.

(9) Santa Maria

This site consists of 27 luxury homes to be sold at a price of $65,000 per unit. The property is located approximately 50 miles from San Juan. They are almost all finished; the first five are totally completed. The company has arranged for mortgages through First National City Bank to the extent of $50,000 per home. To date the company has 12 signed contracts totalling $750,000, all in the third quarter. Santa Maria, because of the high price of the homes, is the highest risk project in which April is involved.

(10) Rio Grande

This property was acquired in June 1972, under very favorable terms. The toal price is $2,000,000, on which the payments are $25,000 quarterly for two years. No interest is to be paid for two years. After the two-year period, April will pay interest at a rate of 7% for five years on the unpaid balance. In addition, April has favorable release clauses attached to the contract. The property currently is zoned for single-family homes ready for construction and has an excellent location. A four-lane highway is in front of the property and a Ford Motor plant across the street. Located right nearby is the site of the new El Commandante race track. (Due to project cost errors and under budgeting, there is some doubt at this time if this track will be built). The first 40 acres of frontage will be for commercial space. April has obtained a rezoning on the remaining 180 acres and may be able to build a condominium high-rise structure. Most probably, April will start with single-family homes. The property is large enough to accommodate anywhere from 3,000 to 5,000 units.

(11) New Haven, Connecticut

This represents April's first state-side venture. The company purchased 200 acres at $1,500 per acre for a total of $300,000. The land is going up for rezoning in the near future. If the zoning change is approved, April plans to build 2,000 condominium units at approximately $40,000 per unit. If April is unable to get the desired zoning, the company will construct 200 single-family houses ranging in price from $40,000 to $60,000. The company is not in the business of selling unimproved raw land. Provided the zoning is changed, April feels that comparable land would sell for $8,000 to $10,000 per acre. The property is located in suburban New Haven approximately 15 minutes away from the heart of the city. Tentative plans for the development call for country club style living, with golf course, tennis courts, swimming pool, etc. As this construction is in the States, April will have to sub-contract the major segments of the project.

Nevertheless, management feels that it will be able to maintain its level of profitability.

( Terrazo Companies

April recently acquired the outstanding stock of three interrelated companies in Puerto Rico engaged in the manufacture and sale of terrazo floor surfacing. The acquisition provided for payment of $400,000 in cash and a maximum of 150,000 shares of April's stock to be paid over a three-year period. Payment is based on net earnings of $1,350,000 over the three-year period. Management believes this acquisition, on which earnings will be tax free for ten years, could provide profit of $600,000 in 1973. The companies when acquired had sales of approximately $1.2 to $1.3 million and net of $450,000. Their net asset value exceeds $800,000. Management estimates that as much as 10% of the cost of construction is terrazo floors, each house using approximately $800 of terrazo flooring. April was having some difficulty in acquiring the amount of terrazo it used as quickly as was needed.

(13) Marble Company

April recently announced the acquisition of Associated Marble, a company engaged in the production and sale of marble in the U.S. and Italy. The company owns and operates its own marble quarries in Carrera, Italy, and also leases mineral rights from others. Terms of the acquisition call for the issuance of 150,000 April common shares payable over a five-year period beginning at the end of 1973. The price is subject to adjustment in the event that net earnings do not reach an aggregate of $2 million through the end of 1976. April intends to set up a facility for cutting the marble in Puerto Rico so that all earnings are expected to be tax free. Management estimates that this acquisition will cut its cost of marble by 50% (to $1.50 from $3.00 per sq.ft.), in addition to providing it with a captive source of marble. Associated is currently producing 1½ million square feet a year, but with the ongoing installation of new machines, production can be increased to 10 million square feet over the next year or two. April alone will be able to consume $2 million worth of marble in 1973. In Santa Maria, for example, April is using approximately $3,000 worth of marble per home. Associated Marble currently has sales of around $2 million a year and profits of $100,000; however, in 1973, April estimates sales of this company will increase to $5 million with earnings in the neighborhood of $400,000.

MANAGEMENT

The active management team at April is composed of Arthur Feder (President), Morris Demel (Executive Vice President), Nathan Aptekar (Vice President & Treasurer), and Stanley Silver (Vice President & Secretary). The average age of top management is in the early forties.

Mr. Feder was a principal stockholder and a Vice President of Futura Development, now a subsidiary of the company, for the past five years. Prior to 1965, he was an officer and principal stockholder of various corporations engaged in the building business (largely one and two-family homes and garden apartments) in the metropolitan New York area.

Mr. Aptekar was essentially engaged in the same activities as Mr. Feder, and also held positions of Vice President and principal stockholder of Futura.

34a

Mr. Demel was similarly involved with Futura Development for the past five years. From 1962 to 1965 Mr. Demel was a project manager for Development International Corporation in Puerto Rico.

Mr. Silver was also a Vice President and principal stockholder of Futura Development for the past five years.

FINANCIAL

The company is in satisfactory financial condition. No new financing is anticipated over the next 12 to 18 months. Credit lines seem ample; of a \$2½ million line of credit with Security National, April has taken down approximately half. As of the end of 1971 (the last available balance sheet) the current ratio was 1.3 to 1. Long term debt is negligible. The company's financial condition was significantly strengthened by the February offering of 325,000 shares at \$13 a share. This offering netted the company approximately \$2.6 million. The funds were used to reduce short term debt and increase available working capital for various Puerto Rican housing projects. Shareholders equity as of June 30, 1972, totaled \$4.8 million.

Leon E. Simcoe
Research Department
October 25, 1972

LES/ns

ADDITIONAL INFORMATION AVAILABLE UPON REQUEST

## PROJECTION FOR 1973

| Project | Units | Amount | Pre-Tax |
|---|---|---|---|
| Sierra Linda (Bayamon) 75% completed | 150 | $ 2.5 Mil. | $ 900,000 |
| Gramco Development Corporation (DCA project) | 300 | 2.9 | 750,000 |
| Las Piedras | 200 | 4.6 | 800,000 |
| Jardines Condado Moderno (Caguas) 50 completed | 152 | 1.8 | 400,000 |
| Villa Evangeline III (Villa II and Villa III) | 144 | 2.7 | 800,000 |
| Terrazo - Tax free subsidiary 30% net no taxes | --- | 1.8 | 600,000 |
| | 946 Units | $ 16.3 Mil. | $4,250,000 |

NOTE: Assuming the terrazo company is tax free and assuming a 40% tax rate net income is $2.790 million or $1.93 per share.

## PROJECTION FOR 1974

| Project | Units | Amount | Pre-Tax |
|---|---|---|---|
| Connecticut | 200 | $ 8.0 Mil.* | $1,000,000* |
| Gramco Development Corporation (DCA project) | 300 | 2.9 | 750,000 |
| Las Piedras | 200 | 4.4 | 800,000 |
| Toa Alta | 200 | 4.5 | 800,000 |
| Rio Grande | 200 | 4.6 | 800,000 |
| April Plaza Condominium (21 Floors) | 456 | 13.3 | 3,000,000 |
| Terrazo | --- | 2.3 | 750,000 |
| | 1,556 Units | $ 40.0 Mil. | $7,900,000 |

NOTE: The same assumption as for 1973 but in addition, we assume 1.65 million shares outstanding. Net income is $5.04 million and per share is $3.05.

* If favorable rezoning is received these figures could be considerably higher.

## ASSETS

| | As at December 31, 1971 | 1970 |
|---|---|---|
| ENT ASSETS: | | |
| ash ............................ | $ 176,856 | $ 482,474 |
| ertificate of deposit-pledged ... | 200,000 | |
| unds in escrow .................. | 50,000 | |
| undry receivables ............... | 149,404 | 23,923 |
| ompleted houses ................. | 35,145 | 45,600 |
| osts and estimated earnings in excess of billings on uncompleted projects .......... | 4,393,987 | 1,442,679 |
| and and land development costs held for future construction and sale, at cost ............. | 528,823 | 3,113 |
| nventory of construction materials and supplies at the lower of cost or market ................ | 85,686 | 48,649 |
| repaid Expenses ................ | 18,383 | 16,581 |
| Total Current Assets ........ | 5,638,284 | 2,063,019 |
| undry Receivables and Other Assets ......................... | 125,373 | 116,026 |
| ixed Assets - at cost, partially pledged ..................... | 460,814 | 341,126 |
| Less: Accumulated depreciation | 158,418 | 100,868 |
| | 302,396 | 240,258 |
| | $6,066,053 | $2,419,303 |

## LIABILITIES AND STOCKHOLDERS' EQUITY

| | As at December 31, 1971 | 1970 |
|---|---|---|
| CURRENT LIABILITIES: | | |
| Notes payable - banks ........... | $ 530,000 | $ 250,000 |
| Notes and loans payable - others. | 76,000 | 103,500 |
| 6% Convertible Promisory Notes .. | 160,000 | |
| Construction advances and demand note payable - collateralized by land being developed | 1,122,987 | 29,386 |
| Current portion of long-term debt | 76,325 | 80,507 |
| Accounts payable ................ | 458,700 | 326,502 |
| Accrued expenses and other liabilities .................. | 337,275 | 187,050 |
| Due to stockholders ............. | 628,577 | 241,060 |
| Due to affiliated company ....... | 77,905 | 79,505 |
| Puerto Rican income taxes - | | |
| Currently payable ............. | 503,468 | 64,500 |
| Deferred ...................... | 511,600 | 251,432 |
| Total Current Liabilities .. | 4,482,837 | 1,613,442 |
| Long-term Debt, less current portion ...................... | 59,908 | 119,515 |
| Deferred Puerto Rican Income Taxes | 35,600 | 35,600 |
| Deposits on Houses .............. | 2,000 | 16,600 |
| Deposits on Houses (held in escrow) | 2,000 | 16,600 |
| | -- | -- |
| Stockholders' Equity: | | |
| Common Stock: | | |
| Utah shares: issued and outstanding 4,992,500 shares ... | | 249,625 |
| | | 249,625 |
| Delaware shares: issued and outstanding 1,228,125 shares. | 61,406 | |
| Capital Surplus ............. | 368,401 | 299,182 |
| Retained Earnings ............ | 1,057,901 | 101,939 |
| | 1,487,708 | 650,746 |
| | $6,066,053 | $2,419,303 |

OTHER RESEARCH REPORTS AVAILABLE

(1) AMERICAN AIRLINES

(2) BERKEY PHOTO

(3) COIT INTERNATIONAL

(4) CONTINENTAL AIRLINES

(5) EASTMAN KODAK

(6) FOX STANLEY

(7) GAF CORPORATION

(8) GEON INDUSTRIES

(9) GIANT STORES

(10) GILBERT FLEXI-VAN

(11) HAYES-ALBION

(12) HORIZON CORPORATION

(13) IGLOO CORPORATION

(14) LA-Z-BOY CHAIR COMPANY

(15) QUESTOR CORPORATION

(16) RUSCO INDUSTRIES

(17) SAXON INDUSTRIES

(18) SCOA INDUSTRIES

(19) SUN CITY INDUSTRIES

(20) TOOL RESEARCH

(21) WALLS INDUSTRIES

(22) WEIGHT WATCHERS INTERNATIONAL

# Hentz Corporate Finance Report

August 1, 1972

PROGRESS REPORT

APRIL INDUSTRIES, INC.*
(OTC, NASDAQ: APRL)

| | | | |
|---|---|---|---|
| Recent Price: | 13 | Share Earnings 1970*: | $0.31 |
| 1972 Range: | 18⅓-10 (Bid) | Share Earnings 1971*: | $0.77 |
| Dividend: | Nil | Share Earns. Latest 12 Mo.**: | $1.00 |
| Shs. Outstd: | 1,445,125 | Share Earnings 1972E: | $1.25-1.30 |
| Shs. Publicly Held: | 375,000 | P/E Latest 12 Mo.: | 13.0x |
| | | P/E 1972 Earnings: | 10.4x |

*Year ends December 31st
**Twelve months ending March 31st

## Introduction

We believe April represents an excellent investment opportunity in the homebuilding industry for the reasons outlined below:

1. Earnings per share are expected to increase at least 63%, from $0.77 for the year ended December 31, 1971 to $1.25-1.30 for 1972. Per share earnings of $1.00 for the latest 12 months ended March 31, 1972 were 30% ahead of year end earnings. Management is estimating per share results for the June quarter of at least $0.25, up 47% from the same period last year.

2. The stock is currently selling at 10.4 times estimated earnings of $1.25. In our opinion, the common stock of April Industries is undervalued and we recommend purchase for businessman's risk accounts seeking capital appreciation over the near and long term periods.

3. The company's demonstrated profitability and the growth in the Puerto Rican homebuilding market shows every indication of continuing as outlined more fully below.

Exhibit D

*H. Hentz & Co., Inc. is one of the primary market makers in the company's common stock.

April Industries plans and develops low and medium cost communities in Puerto Rico. These developments consist of either single-family homes, garden apartments or condominiums and sometimes combinations of the above. A considerable portion of the company's sales are to the Puerto Rican Government's housing administration (CRUV) pursuant to turnkey contracts. All other sales to private buyers are under FHA-insured or VA guaranteed mortgages. The company maintains its own work force, which allows it to maintain strict operating and quality control over all phases of a project's development.

## The Puerto Rican Homebuilding Situation

At a recent field trip to a number of its building sites in Puerto Rico by a group of security analysts, the management of April provided a particularly lucid description of how April was able to generate net profits after taxes equal to 19.4% of total revenues for the year ended December 31, 1971 and how it plans to maintain that margin of profitability in the future. Presented below are some of the economic and market factors which contributed to this profitability and which should continue to do so in the future.

The homebuilding industry, by its very nature, serves basically a local, at very best, a regional market. There is no national market per se for a three-bedroom colonial with center hall, living, dining and family room, or a three-bedroom ranch with carport and sunroom. Each region has its own characteristics -- market, climatic, economic, sociological, political, labor -- that not only determines what will be built, but also how profitably it will be built. In Puerto Rico. as in few places on the mainland, the factors particular to the market are such that homebuilding is and should continue to be a very profitable business.

### Market Factors

During 1971, new housing construction in Puerto Rico increased approximately 20% over the previous year and there is every indication that this rate can be maintained over the next two to three years. This expected growth rate should be made possible through (1) desire of the Puerto Rican Government, through various U. S. government subsidy and mortgage guarantee programs to relocate as many as 40,000 families living in sub-standard conditions to low and moderate-cost housing and (2) the continuing industrialization programs being sponsored by the Puerto Rican Government to provide stable factory employment which will provide the Puerto Rican family with the means for purchasing decent housing. This industrialization effort and the high unemployment rate on the mainland, it appears, could also be attracting Puerto Ricans living on the mainland back to their homeland, creating an additional demand for housing.

One of the important characteristics of this market is that in spite of a generally lower standard of living, prices for new Puerto Rican homes are comparable to similar homes in the U. S., yet the cost of construction in terms of labor and amenities is considerably less. This provides a greater margin of profit for the homebuilder.

Acceptance of high density single-family developments by the consumer allows the builder to offset somewhat higher prices for land and maximizes the return on development costs such as roads, sewers and electrification.

Another interesting factor brought out on a number of occasions was the Puerto Ricans' preference for cement housing. This largely eliminates the competitive threat of mobile homes and prefabricated or modular housing. This, it appears, should also help maintain full pricing for the type housing currently being constructed in Puerto Rico by April.

## Political Factors

A majority of the housing built by the company has been sold to the Puerto Rican Government pursuant to turnkey contracts. This market should continue to play a large role in the company's future growth. Therefore, the continuance of government funding for subsidized housing is a key element of the company's future prospects. Though no one can predict with certainty the extent of additional government funding, there are two factors which bode well for a continued flow of public funds into housing:

1. Increasingly, Puerto Rico is becoming the showplace of American influence in Latin America. Housing is a key factor in making Puerto Rico an example of a progressive and developing capitalistic country.

2. As far as can be determined, the Puerto Rican housing administration (CRUV) has been completely free of the scandals that have plagued numerous mainland housing administrations. This performance should command the attention of federal administrators as funds are allocated in the future.

## Economic Factors

Economic growth in Puerto Rico has been very rapid. Gross product has increased six fold over its 1950 level and has nearly tripled during the past ten years. In the year ended June 30, 1970, gross product totaled $4.6 billion, representing an increase of 11.7% over the prior year.

Net income has increased from $1.4 billion in 1960 to $3.8 billion in 1970. Per capita net income is now $1,427 compared with $582 in 1960.

In a period of two decades, the Puerto Rican economy has shifted from an agricultural economy to one that is predominantly industrial as seen below:

| | 1950 | 1970 |
|---|---|---|
| Agricultural Income | $149 mill. | $ 184 mill. |
| Manufacturing Income | 89 mill. | 953 mill. |
| Total | $238 mill. | $1,137 mill. |

This pricing structure seems to be the result of a relatively limited supply of good housing, and the fact that the FHA is willing to insure mortgages commensurate with current price levels and accepts, for mortgage service requirements, the dual earnings status of both husband and wife, a common characteristic of Puerto Rican household economics.

Labor Factors

In a labor intensive industry such as homebuilding, the availability, productivity and cost of labor are important determinants of profitability. The Puerto Rican labor market provides the company with an ideal labor situation. Of importance, not only is labor cheaper than in the United States, it is also more productive. This situation is the direct result of less powerful unions in the construction trades than generally found elsewhere. In fact, management is able to use its laborers across skill lines, which contributes to their efficient utilization. This is extremely difficult to achieve in the U. S. market where union power keeps management in strict compliance with narrowly defined work rules. Because worker attitudes and turnover are favorable when compared with major U. S. markets, costly training and supervisory overhead is kept to a minimum. This situation translates into meaningful profits for the company.

Climatic Factors

Climatic factors bear importantly on construction costs in more subtle ways. Since Puerto Rico has a semi-tropical climate, houses are constructed more simply and with less expensive materials than in colder climates. For example, central heating systems and insulation are eliminated. Windows of glass found in all U. S. homes are replaced with metal louvers. The extensive use of cement is made possible because of the sunny and mild climate. Similar construction would be damp and cold in northern areas.

The mild climate also allows the company to build uninterruptedly throughout the entire year. This keeps the work force intact and reduces temporary stoppages caused by severe weather conditions.

Sociological Factors

In its single-family housing developments, the company builds approximately seven homes per acre (the Puerto Rican acre is approximately 4,000 sq. ft. smaller than the U. S. acre). This high density for single-family housing seems to be the result of two factors:

1. lack of adequate public transportation requires that people live closer to their work, creating a scarcity of land in the more industrialized areas

2. an island type psychology that appreciates that land is a very limited resource, whose use should be maximized.

This economic growth should be maintained as an adequate labor supply, low wage rates and the Commonwealth Government's tax incentive program continues to attract both American and European new industry. In addition, a recently completed limited access highway connecting both ends of the Island should open up previously inaccessible areas to development.

## Company Developments

### Vertical Integration - Recent Purchase

The company has recently concluded the purchase of a manufacturer of terrazzo floor surfacing, a product used extensively in April's developments. This forward integration will provide the company with a significantly lower cost for flooring in addition to adding sales and profit from sales to outside sources. This acquisition includes a payment of $400,000 in cash and a maximum of 150,000 shares of common stock to be paid over a three-year period.

### New Condominium Project

April recently purchased a three and one-half acre site to be used for the construction of 384 high rise condominium units. The ground floor of this unit will be rented to commercial tenants. This site is within easy walking distance to the Island's largest judicial center and hospital. It is also close to the new banking and commercial center in metropolitan San Juan. The company is planning on selling these units starting at $23,000 per unit. This price category is designed to fill a void in the Puerto Rican condominium market as presently available condominium units sell at substantially higher prices.

### Operating Control

April continues to maintain tight daily operating controls over its construction activities. The fact that the company has its own work force that is capable of handling each job from site preparation to the finishing touches on each house, adds immeasurably to management's control over its operation. This shortens the manufacturing cycle, thereby reducing the funds tied up in work in progress. By maintaining its own work force, the company is able to maintain the integrity of quality not often found with other homebuilders that basically act as general contractors.

In our opinion, the factors outlined give April Industries the attractiveness of a special situation in the homebuilding industry. We believe that its above average profitability and growth will continue into the future. At the present time, it has approximately 700 acres under option or owned. At seven houses per acre, the company has building sites for approximately 4,900 units, a four to five year supply.

Connecticut Development

The company recently acquired a 200-acre tract of land a short distance from New Haven, which is presently zoned for one acre single-family homes. The company plans to develop garden apartments and is currently pursuing the necessary zoning changes.

Earnings Projection

Earnings are projected at $1.25 to $1.30 per share for the year ending December 31, 1972. This is based on revenues of approximately $10.0 million, up more than 100% over the previous year, and an after-tax margin 18 to 19%. A larger percent of the company's revenues are expected to be generated by sales to private buyers. This should help maintain current pre-tax margin levels as private sales tend to be more profitable than turnkey contracts.

Statistical

| | 12/31/71 | | 12/31/70 | |
|---|---|---|---|---|
| Sales: | | | | |
| Turnkey | $3.7 mill. | 75% | $3.2 mill. | 84% |
| Private | 1.2 mill. | 25% | 0.6 mill. | 16% |
| Total | 4.9 mill. | 100% | 3.8 mill. | 100% |
| Pre-tax Income | 1.6 mill. | | 0.8 mill. | |
| Pre-tax Margin | 32.5% | | 20.8% | |
| Tax Rate | 40.5% | | 37.8% | |
| Net Income After Extra-ordinary Item (000) | $956 | | $386 | |
| Per Share | $0.77 | | $0.31 | |

| | December 31, 1971 | Pro Forma* |
|---|---|---|
| Current Assets | $5,638,284 | $7,582,604 |
| Current Liabilities | 4,482,837 | 3,982,837 |
| Working Capital | $1,155,447 | $3,599,767 |
| Other Assets | 125,373 | 125,373 |
| Fixed Assets (net) | 302,396 | 302,396 |
| Net Assets before long term debt and deferred taxes | $1,583,216 | $4,027,536 |
| Long Term Debt | 59,908 | 59,908 |
| Deferred Taxes | 35,600 | 35,600 |
| Stockholders' Equity | $1,487,708 | $3,932,028 |

*after giving effect to the recent sale of common stock

Ronald P. Abate

EXHIBIT E - REPORT

# COHEN, SIMONSON & REA

INCORPORATED
Established 1929

Members: New York Stock Exchange • American Stock Exchange
111 Broadway, New York, N.Y. 10006 • telephone 964-3600

April Industries

(APRL-OTC)
Recent Price: 13 7/8-14 1/4

| Earnings Per Share Year End December 31 | |
|---|---|
| 1973 | - $1.80 - $1.90 Proj. |
| 1972 | - 1.40 Est. |
| 1971 | - 0.77 |
| 1970 | - 0.39 (1) |

(1) Before an estraordinary charge of $0.08 a share.

Indicated Dividend

None

Capitalization as of Feb. 3, 1972

Long Term Debt: $141,259
Common Stock: 1,445,125 Shares

## Summary and Opinion

April Industries is believed to be Puerto Rico's fastest-growing builder of single-famil homes and garden apartments. Assembled into its present form through the 1970 and 1971 consolidation of several closely-allied Puerto Rican homebuilding operations, April has in recent periods gained an increasing stake in the island's steadily-expanding construction activities. Per share earnings in 1971 increased to $0.77, up from $0.39 (before an extraordinary charge of $0.08) on a 26% gain in revenues to $4,923,859.. Reflecting significant recent expansion in the scope of its operations, per share earnings for the first half of 1972 (ended June 30) advanced to $0.55, compared with $0.29, on a 2.1-fold rise in revenues. Based on the Company's present level of construction in progress and additional work it plans to undertake before year-end, we believe that April could record per share earnings of approximately $1.40 in 1972 on a revenue base of some $10,000,000. With the Company's prospects over the balance of 1972 favorably defined and with an American Stock Exchange listing likely before year-end, we regard the common shares as an attractive purchase for possible intermediate to long-term appreciation.

## The Puerto Rican Economy, Its Homebuilding Industry and April

The economy of this U.S. - owned territory has grown rapidly in recent years. An influx of subsidiaries of major U.S. - based corporations (favorable tax concessions and relatively low-cost labor have combined to make this island an attractive location for conducting a wide range of manufacturing activities) has provided the impetus to economic growth accompanied by rapid gains in per capita income. The immediate offshoot of this economic improvement has been an increasing demand for adequate housing. While in each year between 1965 and 1971 the number of new housing units

45a

completed has ranged between approximately 18,500 and 22,500 dwellings, substantial pent-up demand remains.

One trend that has arisen in recent years and which we would expect to continue is an increasing emphasis being placed upon privately-owned homes and a corresponding demphasis on the publicly-owned sector of the residential construction market, principally FHA 236 dwellings. The immediate reasons for this trend appear to be: first, the island's rising per capita income, and second, Section 235 of the National Housing Act which provides interest subsidization on mortgage loans to the private buyer with a maximum annual family income of $5,000. For 1972, the Federal Housing Authority has assigned to Puerto Rico funds sufficient to generate the construction of some 10,000 dwellings under the Section 235 program. Based on the level of residential construction in Puerto Rico during the first half of 1972, we believe that total unit completions for the year could reach a record 23,000 homes, compared with 21,697 units in 1971. Our estimate inclused 18,000 dwellings which would fall under the private-ownership category, with the remaining 5,000 homes to qualify as public housing.

The relative importance of Puerto Rico's homebuilding industry is perhaps best understood as it relates to the island's gross national product. Homebuilding is presently accounting for approximately 10% of the dollar value of Puerto Rico's economic activity. While it is unlikely that residential construction will account for as high a percentage of the island's rapidly expanding gross national product in the years ahead, it appears likely that the industry will be able to add at least 20,000 new dwellings per year in the foreseeable future. Both Washington's vested interest in maintaining a growth-oriented Puerto Rican economy amidst the economic and political turmoil which has characterized Latin America, and the island's historically low rate of defaults on FHA-insured mortgage loans (less than ½ of 1% in recent years) reflect well on the homebuilding industry's prospects for future growth.

Puerto Rico's homebuilding industry is a highly frag[illegible] one with no single firm possessing a dominant foothold. While the 1,000 to 1,100 dwellings April should deliver in 1972, or somewhat more than 4% of all homes to be constructed on the island during the year, will qualify the Company as a leading factor in the industry, a number of competing firms (including Rexach, Atlantic Quality, Bird, Interstate, and the Puerto Rican divisions of both Levitt and Centex) are believed to each have comparable or somewhat greater shares of the residential construction market. What distinguishes April is the integrated nature of its building operations. Unlike its competitors who subcontract substantially all of the construction work they undertake, April is able to rely almost exclusively on its internal capabilities. The most noticeable difference in April's method of construction is the Company's unparalleled ability to deliver a completed dwelling unit in a period of less than 12 weeks. Viewing April's integration somewhat more closely, we believe that this single factor alone has enabled the Company to evolve as the island's most profitable builder. We feel that April's competitive stature in its industry should enable the Company to account for a minimum of 10% of all new homes completed in Puerto Rico in each year by 1975.

-over-

Assuming no growth in the total number of homes delivered in Puerto Rico between 1972 and 1975, which we feel is highly unlikely, the expansion we foresee in April's share of the residential construction market should enable the Company to increase its revenue base at a minimum compounded annual rate of 25% over the next three years. However, what we believe is more likely to happen between 1972 and 1975 is a gradual but steady increase in the total number of homes delivered in Puerto Rico in each year, an increase in April's market share to a figure somewhat above the 10% level, and a programmed expansion by April of its base of operations to include attractive residential construction markets along the eastern coast of the U.S.

## The Company

April Industries was structured into its present form through the 1970 and 1971 consolidation of several closely-allied Puerto Rican homebuilding operations. The original group of companies which now comprise April were formed at varying times between 1966 and 1969. From an entity with a pro forma revenue base of only $1,312,000 as recently as 1968, April has emerged as a dynamically growing corporation whose revenues should expand to at least $10,000,000 in 1972.

What makes April somewhat unique among its counterparts in the homebuilding industry is its high degree of vertical integration. Rather than acting as a general contractor supervising a group of sub-contractors, April is engaged in virtually all aspects of home construction from site planning and development through the actual erection and finishing of the dwelling unit. The Company is able to achieve high level economies of scale through the simultaneous construction of 100 or more homes. This method of operation enables April to keep its work crews almost constantly active and to thereby minimize the time required to complete a home.

Virtually the only construction service the Company has strayed away from has been the ownership and operation of a concrete facility. April's reasoning for avoiding this one basic area has been the significant capital requirements such an operation would necessitate and the relatively low return on investment characteristic of this phase of the construction business. By contrast, no single area of April's construction operations can accurately be described as capital intensive or providing other than a significant return on invested capital.

Two factors are believed to be most significant in accounting for April's inordinately profitable building operation: first, a highly efficient and low-cost labor force in the absence of trade unions, and second, the relatively inexpensive reinforced poured concrete walls and plastered interiors and exteriors which the extremely humid climate require have combined to keep building costs to a bare minimum. At present, the only building trade in Puerto Rico which is unionized is the heavy equipment operation area. Union organization in the other trades is either in the earliest stages of formation or virtually non-existent. With labor costs ranging from $1.60 per hour for unskilled labor to $3.25 per hour for the more highly skilled concrete workers (overtime pay generally runs up to 100% higher), April is often able to keep its production running for as long as 12 Hours a day. The use of concrete as the basic building product has aided the company in keeping its projected costs well under control. With concrete costing some $17 per cubic yard at point of delivery and with the average three-bedroom, two-bathroom home which sells for

approximately $24,000 requiring some 60 cubic yards of concrete, April is able to run a fairly accurate check on its material costs while incurring a minimum of waste.

The single variable which Puerto Rican homebuilders seem to have the least control over is the high cost of land. Today, it is not uncommon to see large tracts of residentially-zoned acreage, which require substantial site preparation expenses, selling for up to $10,000 per acre. One of April's strongest points is its inventory of some 700 acres of residentially-zoned land (more than 5,000 homesites) which represents tracts either owned or controlled by option. An asset which is not clearly visible on the Company's balance sheet is the now significant difference between the cost of April's land inventory and today's fair market valuation. Although historically most profits have been derived from construction activities, the land inventory should play a major role for the next three to five years in maintaining the high level of profitability of April's Puerto Rican operations.

At July 1972, the value of work April had under varying stages of development coupled with work scheduled to start before year-end amounted to $54,113,000. Of this work load, homes for the private buyer under Section 203 of the National Housing Act represented 44%; subsidized housing for the private buyer under Section 235, 24%; public housing, principally Section 236 turnkey projects for the Puerto Rico Urban Renewal and Housing Corporation (CRUV), 22%; and commercial and general construction work, the remainder.

April's backlog of work, all of which is concentrated in the northeast portion of the island, includes four developments for private buyers with single-family homes ranging in price from approximately $20,000 to $70,000; three projects being built pursuant to turnkey contracts for CRUV with average unit selling prices of $16,650 to $23,000; 304 single-family units being built against a contract for $3,621,000; and a 30-story structure which will combine office space on the lower floors with 456 condominium apartments above.

Not included in April's backlog of work is a joint-venture with American Stock Exchange-listed Development Corporation of America. This project, which will eventually include 850 homes for private buyers with an average selling price of $25,000, is being developed under a management contract which will enable April to receive 60% of the profits realized or incur 50% of any losses. While to date the joint venture has recorded a loss of more than $300,000 due to lower than sufficient pricing on the initial units delivered, we believe that the project should be on profitable footing before year-end, and that it could make a substantial contribution to earnings in both 1973 and 1974.

While the profitability of the public housing segment of April's backlog (about $13,500,000) could come under some pressure due to increased building costs which will not be able to be passed on against contracted delivery prices with CRUV, we feel that the relatively more elastic pricing which characterizes the private and commerical building segments of the Company's business will provide more than adequate compensation to net margins. In 1971, April was able to record a profit which amounted to approximately 19% of its sales volume after a 41% tax rate. In the first six months of 1972, the Company's level of profitability held at precisely

the same rate despite the impact of the unprofitable joint venture with Development Corp. We believe that over the balance of the year, an improved performance by the joint-venture could contribute to slightly improved profit margins. Viewing the Company from a long-run perspective, the potential of substantial profits from its joint-venture, April's on-going shift in emphasis from the public housing field to the more profitable private residential and commercial areas, and the profit potential for 1973 and 1974 of a high-rise office and condominium structure on which construction is to commence later this year could combine to result in an extremely high level of profitability for some time to come.

In August 1972, April announced the acquisition of a group of interrelated companies engaged in the manufacture and sale of terrazo floor surfacing for a price of up to $400,000 in cash and 150,000 shares of April common. The pay-out by April will be contingent upon the acquired companies attaining a specified level of earnings over the next few years.

In a move which may lead to April's initial development outside of Puerto Rico, the Company recently acquired 200 acres of land near New Haven, Conn. for $300,000 in cash. While the land is presently zoned for the construction of 200 single-family homes, April has applied for a variance which, if granted, would enable the Company to build up to 2,400 garden apartments on the site.

Finances

While April's current ratio at December 31, 1971 was only 1.3 to one, the Company's finances were significantly improved through its February 1972 sale of 217,000 common shares (as part of a 325,000 share offering sold through a group headed by H. Hentz & Co., Inc.) which resulted in net proceeds to April of $2,595,000. In addition, April's working capital position is supported by substantial lines of credit secured by its on-going developments and supplemented by lines of unsecured credit. With the recent extension of a $2,500,000 line from Security National Bank (the line had formerly been for only $1,000,000) at a rate of up to 1½% above the prime rate, there appears to be little need for a major financing at the present time.

Accounting

On dwellings delivered under contract to CRUV, April recognizes sales and earnings on a percentage of completion basis. However, sales of homes to private buyers (substantially all such units are sold before or during construction) and earnings thereon are recorded upon completion.

Earnings

Revenues in 1971 advanced 26% from those of the prior year, benefiting from an increased on-going level of work under contract to CRUV and a higher dollar volume of homes delivered to private buyers. After giving effect to a pro forma adjustment to 1970 figures (reflecting the consolidation of a previously outstanding minority interest), net income climbed 95%. Share earnings were $0.77, up from $0.39 (before an extra-

ordinary charge of $0.08). For the first half of 1972, net income rose 2.1 - fold on an approximately equal percentage gain in sales. Share earnings increased to $0.55, from $0.29, on a greater average number of shares outstanding. Based on the Company's present level of construction in progress and additional work it plans to undertake before year-end, we believe that April could record per share earnings of approximately $1.40 in 1972 on a revenue base of some $10,000,000.

## Conclusion

Presently trading at only ten times our estimate of earnings for the current year and less than eight times projected earnings for 1973, we believe that the common shares are giving little weight to the Company's favorable prospects for the period ahead. Speculative commitments are recommended for possible intermediate to long-term appreciation.

Income Statistics (Million $) and Per Share ($) Data

| Year End December 31 | Net Sales | Net Income | Earnings Per Share | Price Range |
|---|---|---|---|---|
| 1973 | $15.00 Proj. | - | $1.80-$1.90 Proj. | - |
| 1972 | 10.00 Est. | - | 1.40 Est. | 18 1/2-10 1/8 |
| 1971 | 4.92 | 0.96 | 0.77 | 21 -11 |
| 1970 | 3.89 | 0.25(1) | 0.39(1) | - |

(1) Before extraordinary charge of $0.08 a share.

Richard M. Lilly
Research Department
August 14, 1972

EXHIBIT F - REPORT

VALUE LINE SELECTION & OPINION 50a

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Volume XXVII No. 43 | In Three Parts – This is Part II | August 3, 1972

# THE SPECIAL SITUATION: APRIL INDUSTRIES

**COMMON STOCK RECENT PRICE: 12½ TRADED: OTC**

April Industries is a fast-growing homebuilder in Puerto Rico, with project expansion onto the mainland U.S. imminent. Its shares, which could be listed on the American Stock Exchange before year-end, are of interest for the following reasons:

• Over the past three years (1969-71), starting, admittedly, from a small base, sales have almost quadrupled while net income has climbed from $20,000 to nearly $1 million last year.

• This year (ending December 31st), a *doubling* of sales and net income is a minimal expectation; this equity is now selling at only 10 times projected 1972 results.

• The company's wide profit margins will likely remain at the present levels because of a tightly controlled production schedule made possible by an unusually well-integrated work force; April does *not* use subcontractors.

• The company is almost debt free; land inventory and credit lines are adequate.

• Long-term prospects are excellent; appreciation potential to 1975-77 is about 160%.

• Given the company's present earnings momentum, downside risk seems minimal at present price levels.

### Island in the Sun

Lying between the Atlantic and the Caribbean, Puerto Rico, the easternmost island of the Greater Antilles, is 100 miles long by 35 wide. Its population of close to three million almost equals that of the three counties (Broward, Dade, and Palm Beach) comprising Southeast Florida's famed "Gold Coast."

With per-capita incomes rising and population expanding, Puerto Rico has had a chronic housing shortage. However, fueled by abundant credit at liberal terms (Federal and Commonwealth mortgage tools and institutions), the value of homebuilding in Puerto Rico this year will exceed $400 million, or about 10% of the island's gross national product. The present annual construction rate of 23,000 units is comprised primarily of private dwellings, with only about one-fifth being government-sponsored public housing, whose share of the market has been declining steadily.

Much of the momentum for the increase in private dwellings derives from Puerto Rico's emerging middle class, with its ready access to FHA and VA mortgages. Moreover, Washington apparently wants Puerto Rico to be a "showcase" for politically volatile Latin America. Accordingly, we expect continued dramatic growth in Puerto Rico's single-family housing market.

To a Puerto Rican, his home is indeed his castle. As such, it is by far his largest personal investment. The repossession rate on FHA mortgages is unusually low. By the same token, with local citizens interested in a house with a solid concrete foundation on a plot of land, the island's mobile home market is almost non-existent.

### Corporate Background

The company's predecessor, organized in Utah in 1916 under the name Alta Helena Mining & Milling Co., engaged in mining operations. In 1961, it curtailed mining activities and started selling its properties as lots for single-family homes. Such land sales activities were terminated in 1968. In 1969, it changed its name to April Industries, Inc. ("April-Utah").

In November 1970, April-Utah acquired a 37.5% interest in M.D. Construction Co., Inc., a subsidiary of Futura Development of Puerto Rico, Inc. In April 1971, April Industries, Inc., a Delaware corporation, was organized by April-Utah as a wholly-owned subsidiary, and thereafter April-Utah was merged, the resulting entity being April Industries, Inc., a Delaware corporation. In June 1971 April-Utah acquired Futura and its subsidiaries, a group of home builders organized between 1966 and 1969 in Puerto Rico.

April's present management team, which had controlled Futura, was formed during the tight money years of the late 1960's, when many a U.S. builder retreated from Puerto Rico back to the mainland. Before moving to Puerto Rico, April's management successfully built garden

*Continued on page 312*

## THE ISSUE AT A GLANCE

• **Special Situation:** April Industries, which is primarily involved in building moderately priced housing in Puerto Rico, offers superior appreciation potential over the longer pull. The company is also expanding its mainland operations. For our analysis, see left.

• **Value Line View:** Just about everything's coming up roses in the economy, but the stock market remains to be convinced. For our assessment of the situation, see page 310.

• **Weekly Tables:** See page 310. Note, however, that the Value Line Averages are available only through Monday, July 26. One of our computers has been having its problems but should be back to work in time for the next issue.

• **Weekly Charts:** See page 311.

• **Insiders' Report:** For a rundown on significant officer/director stock transactions through May 10, 1972, see page 314.

• **Updates:** Financial General (ASE — 11) and Spector Industries (ASE — 7¾).

# THE VALUE LINE VIEW: SECOND WIND

President Nixon may just be able to conduct a rocking chair campaign for re-election from the porch of the White House — at least on economic issues. The dramatic rate of gain in the gross national product and the marked deceleration in the pace of inflation during the second quarter caught even the Administration's professional optimists by surprise, albeit happily so. The stock market, however, after a couple of rousing days regressed into the ho-hum attitude with which it has greeted most welcome news. Inevitably, we believe, as the scope of the recovery becomes apparent, prices will work higher.

Specifically, the GNP, which measures the country's total output of goods and services, rose at a real (i.e., excluding the effects of inflation) rate of 8.9% in the June quarter. This is the fastest pace since the last three months of 1965 when a 9.4% increase was recorded.

Inflation, as measured by the GNP price index, slowed to a 2.1% annual pace. This was considerably less than half the 5.1% rate recorded during the first three months of the year. During June, the consumer price index rose a seasonally adjusted 0.1%. At midyear, the Labor Department's indicator was only 2.9% above the like 1971 level. This marks the first time since 1967 that the year-to-year gain was less than 3%. Quotes on nonfood commodities held steady on a seasonally adjusted basis for the first time since the 90-day wage/price freeze imposed last August 15. In May, prices for such items were rising at a 6% annual rate. This is significant and favorable in light of the fact that while short-run swings in food prices are all but inevitable, longer range trends tend to be dominated by nonfood items.

Shortly after the good news on the GNP and inflation was released, the Commerce Department announced that the index of leading economic indicators was up 0.5% in June. The May figure, originally reported as a sluggish 0.2%, was revised upward to a 1.4% gain. The series, which generally foreshadows broad trends in domestic business activity, has climbed 25% in the past 20 months, indicating the economic expansion can be sustained at least through yearend 1973. The aggregate gain in the second quarter was 4.2% — the strongest showing since the 5% surge in the first three months of last year when the economy was recovering from the effects of the strike at General Motors. Of the eight available indicators, four improved — average work week, building permits, stock prices, and new orders for durable goods; new plant and equipment orders were unchanged from the previous month.

## THE VALUE LINE AVERAGES

| | Composite | Industrials | Rails | Utilities |
|---|---|---|---|---|
| 7-11-72 | 115.41 | 120.14 | 108.07 | 89.04 |
| 7-12-72 | 114.71 | 119.34 | 107.49 | 88.89 |
| 7-13-72 | 113.94 | 118.48 | 106.68 | 88.66 |
| 7-14-72 | 114.19 | 118.77 | 106.47 | 88.69 |
| 7-17-72 | 113.22 | 117.67 | 105.68 | 88.49 |
| 7-18-72 | 112.72 | 117.12 | 105.21 | 88.32 |
| 7-19-72 | 112.91 | 117.32 | 104.73 | 88.50 |
| 7-20-72 | 112.42 | 116.75 | 105.62 | 88.37 |
| 7-21-72 | 112.93 | 117.34 | 106.24 | 88.39 |
| 7-24-72 | 114.11 | 118.68 | 107.09 | 88.63 |

## RELATIVE PRICE PERFORMANCE LAST SIX WEEKS

| 12 BEST INDUSTRIES | | 12 WORST INDUSTRIES | |
|---|---|---|---|
| Bank | + 3.8% | Fasteners | - 6.8% |
| Savings & Loan | + 3.1% | Real Estate | - 6.9% |
| Distilling | + 2.6% | Apparel | - 6.9% |
| Automobiles | + 1.7% | Air Transport | - 7.8% |
| Drugs | + 1.7% | Retail Drug Store | - 7.9% |
| Petroleum | + 1.3% | Trucks | - 8.1% |
| Soft Drink | + 0.6% | Baking | - 8.7% |
| Brewing | + 0.0% | Retail Store | -11.1% |
| Steel | - 0.2% | Grocery Stores | -11.4% |
| Meat Packing | - 0.4% | Leasing | -11.7% |
| Railroad Equipment | - 0.5% | Retail-Special Lines | -18.4% |
| Household Products | - 0.5% | Coal | -19.1% |

The corresponding change in the Value Line Composite Average is -4.1%

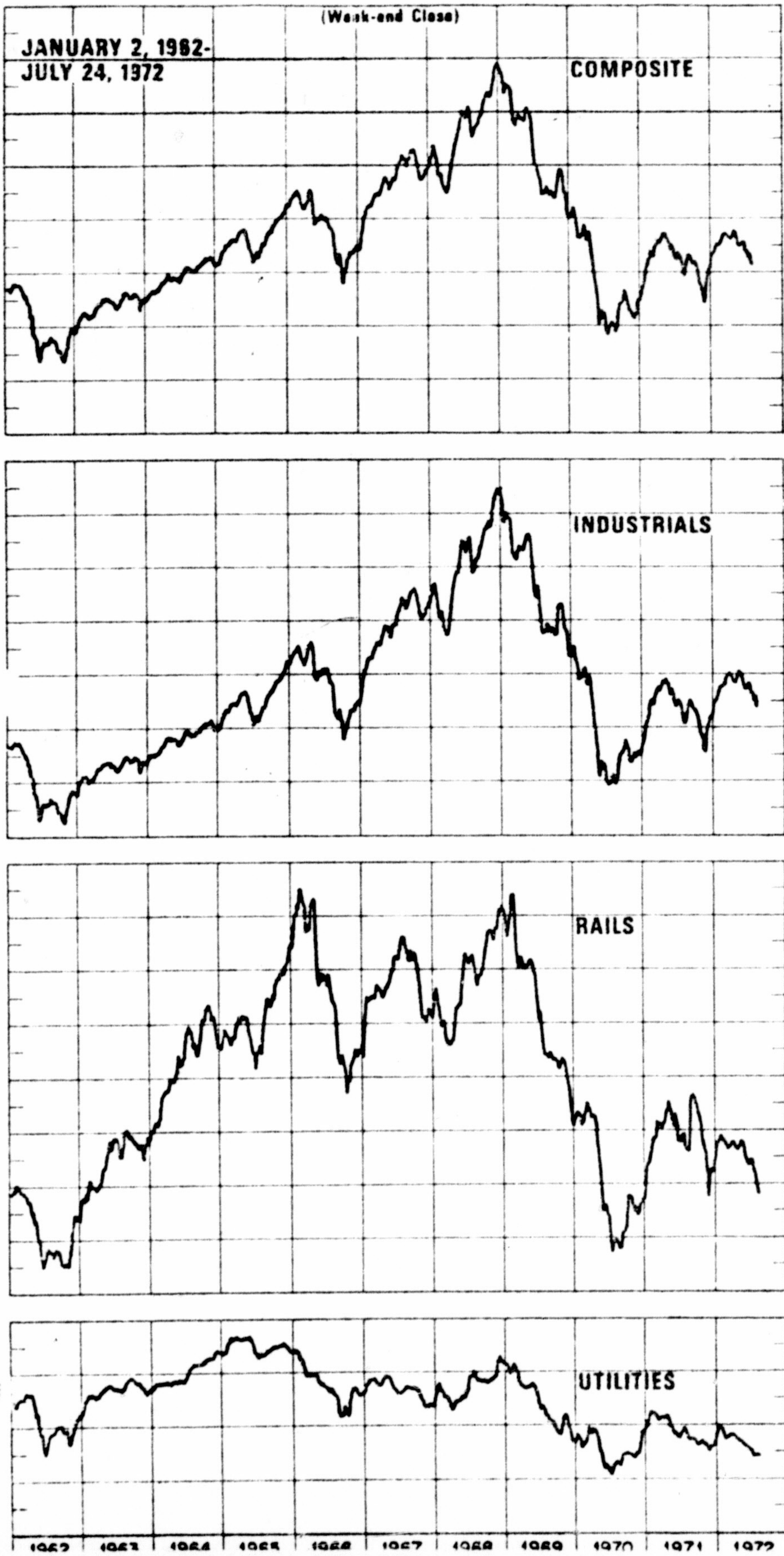
Taking a closer look, the new orders for durable goods are impressive; bookings spurted 3.6% in June, running at an annual rate of close to $35 billion. Also of interest is the fact that orders for capital goods industries, often a clue to businessmen's spending plans, rose 11%. The backlog of unfilled orders rose 3.1% to an adjusted $76.86 billion; at the end of May, industry's backlog, which had risen only 0.6% during the month, stood at $74.52 billion.

The Administration's efforts to enhance productivity and put a damper on inflationary wage settlements also appear to be paying off. According to Labor Department data, output per hour of work rose at a seasonally adjusted pace of 6% in the private sector during the June quarter. For all of 1971 and the first quarter of 1972, the rates of gain were 3.7% and 3.3%, respectively. Increases in compensation per hour of work returned to 1971 levels; they had risen substantially during the first three months of the year, as expected, following the Phase I freeze period.

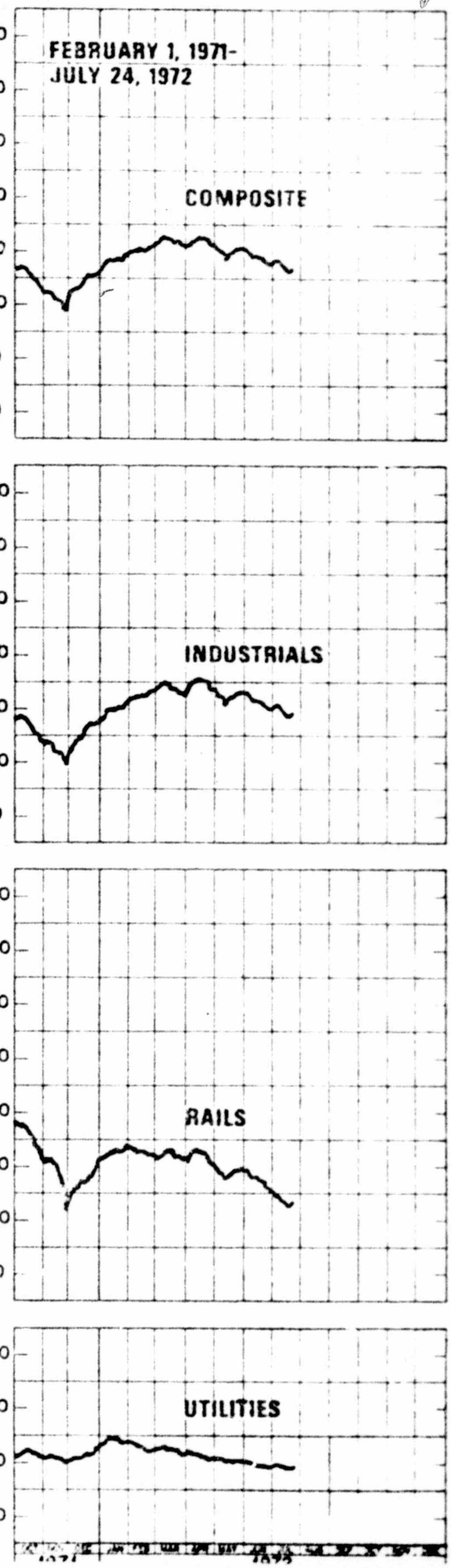
The Conference Board's May-June survey of consumers reveals the general public is somewhat less uneasy about the state of the economy but inclined to be cautious about spending plans. Granted pre-election rhetoric has an indeterminately adverse effect, it's nonetheless distressing to learn that only 23% of the 10,000 families checked believe business will improve over the next six months, as against 26% in the previous survey. Clearly, there has been a breakdown in communications somewhere along the line.

In point of fact, business is great and getting better. Corporate earnings in the second quarter were up over 15% on a year-to-year basis. And prospects for the balance of the year are equally favorable. Price and wage controls have proved no bar at all to sustained advances. Since profits are the principal determinant of stock prices, we continue to advise a fully invested position for most long-term accounts, with holdings concentrated in issues ranked highest or above average for year-ahead market performance. SO

## WEEKLY CHART - VALUE LINE AVERAGES




## DAILY CHART - VALUE LINE AVERAGES



**April Industries**
*Continued from page 309*
apartments (Majestic Gardens, Inc.) in the highly competitive metropolitan New York area.

April's experienced but relatively youthful management is led by 46-year-old Arthur Feder. Mr. Feder and two of April's vice-presidents (Morris Demel and Nathan Aptekar) were born in Poland, and are survivors of the Nazi holocaust.

**Operational Self-Sufficiency**
How is April able to achieve its wide profit margins (32.5% pretax last year) in the competitive Puerto Rican homebuilding environment? The answer centers on the company's total construction capabilities: April controls *all* of its operations, including earthwork, building, personnel, equipment, and the like. As a result, it is able to provide low-cost shelter products to Puerto Rico's varied housing submarkets.

At present, April employs close to 1,000 workers, most of whom have been trained by the company. Many of the individual workers have dual specialties — for example, plumbing and electrical work. Labor costs are considerably lower than in the U.S.; bonuses and overtime pay are commonplace. There have not been any strikes and the company's pilferage experience is minimal.

It helps considerably that top management is on the job site with the workers on a daily basis. Many homebuilders in Puerto Rico are merely subsidiaries of large corporations headquartered in New York, or other large cities. In addition Puerto Rico's year-around mild climate, as well as its long hours of daylight, aid productivity.

The company is self-sufficient in a variety of areas. It has its own equipment subsidiary, which buys directly from the factory. Its own architectural department — unusual for a relatively small homebuilder — is able to expedite rezoning projects as well as to avoid costly delays. In effect, there are no subcontractors to make a dent in April's profit margins.

Another operational innovation is April's extensive use of an ultrahigh frequency radio-telephone system which interconnects headquarters with each project site, plus mobile vehicle units. As used by April, this system is reminiscent of a coordi-

**Business:** April Industries, Inc. is principally engaged in the planning and building of developments primarily of moderately-priced housing units in Puerto Rico. Construction capabilities include single-family residences, garden apartments, and high-rise condominiums. Projects on mainland U.S. are an increasing probability. Company, which is incorporated in Delaware, is the resulting entity of an April 1971 merger of a Utah corporation of the same name. Insiders control 74% of shares outstanding. President: Arthur Feder. Address: 303 West 42nd Street, New York 10036 and Condominio El Centro 204, Hato Rey, Puerto Rico 00918.

**CAPITAL STRUCTURE, as of 12/31/71**
**Debt:** $.06 million
**Pfd. Stock:** None
**Common Stock:** 1,445,125 shares as of 2/10/72
**Interest on L.T. Debt:** $.004 million
**Div'd on Pfd. Stock:** None
**Net Worth:** $1.49 million
**Total Capital:** $1.55 million
**Book Value P/S:** Approx. $2.64 a share ❸
**Working Capital:** $1.16 million

| | 1970 | 1971 | 1972 |
|---|---|---|---|
| Earnings P/S | ❶ .39 | .77 | 1.30 |
| Div'ds P/S | -- | -- | Nil |
| P/E Ratio | ❷ 29.0 | 23.6 | |
| Div'd Yield | -- | -- | |

❶ -Excludes extraordinary loss of 9¢ a share.
❷ -10 months. ❸ - as of 2/10/72

nated military command post during a battle. Job site problems are pinpointed immediately; production and costs are controlled on a daily basis. The labor force is employed efficiently and the company's 106 large work pieces and 38 light vehicles suffer little "downtime."

The end result of April's highly developed flow process is exceptional production flexibility and speed. Quality control is also improved as are cost projections and production scheduling.

April's seven present projects are in the Northeast quarter of Puerto Rico, which includes San Juan. The prices of the units being built range from $12,000 (government subsidized apartments) to $65,000 luxury homes (five bedrooms and three baths). The company's housing units, both single family and garden apartments, are generally built of reinforced poured concrete concrete block and plaster interior partition walls.

**Que Pasa**
April's present work in progress exceeds the $54 million level. It is divided between public housing (22%), Section 235 subsidies (24%), private buyers under Section 203 (44%), and commercial building and general contracting (10%). Significantly, public housing, from which April derived about 90% of its past profits, has dwindled to 22%. Filling the gap will be more flexibly priced private homes.

Note: the $54 million figure referred to above *excludes* Bella Vista Gardens in Bayamon. A large 850-unit, it is being built, under a management agreement, with the prestigious Development Corporation of America (American Stock Exchange). Under terms of the contract, April will receive 60% of the profits or sustain 50% of the losses. Considering its potentially wide profit margins, we estimate that April's share of the project's net could amount to about $2 million over a three-year period.

Among other residential communities now under development are:

•Two projects (592 total units) in Manati, about 35 miles west of San Juan. Each is a $3.2 million project being built for the Puerto Rico Urban Renewal and Housing Corporation (CRUV).

•27 luxury single-family homes (about $65,000 each) in Guaynabo, on the outskirts of San Juan. The homes will contain four and five bedrooms, three baths, and will range from 2,300 to 2,500 sq. ft.

•A HUD-financed community of 304 town houses in Cagnas, for which April is general contractor and receives a fee.

April delivers fixed-price, turnkey projects to CRUV; the company's responsibility does not extend to any occupancy or rental aspects. Sections 235 and 236 of the National Housing Act of 1968 involve low and moderate-income, single-family homes and multifamily dwellings, respectively.

Of the total value of housing to be built in Puerto Rico this year (an estimated $435 million), April's sales will probably be slightly less than

pany to build in excess of 1,000 housing units this year (some of these earnings have previously been accounted for under the percentage of completion accrual method).

**Room to Grow**

The company's present land inventory now exceeds 700 acres, excluding options and present negotiations. This inventory translates into about 5,000 housing units, or about three years of production at an accelerated rate. It has been management's unique custom to buy land almost exclusively on an interest-free basis for the first two years — i.e. not paying interest on borrowed purchase money before the land is utilized. There is more land available in Puerto Rico and we expect April to expand into the remaining three-fourths of the Island. In this connection, April acquired University Plaza Condominiums, Inc., for approximately $1.8 million in June. University owns a 3¾-acre site in Hato Rey, the new banking and commercial center of San Juan. The site has been zoned for a condominium development and preliminary approval has been obtained for construction of a 30-story, 456-unit condominium (with total sales value of about $13 million). Construction is expected to commence shortly.

Additionally, April has agreed in principle to acquire (as of May 31) three inter-related Puerto Rican companies which manufacture and sell terrazzo floor surfacing. This acquisition, which will further increase the company's self-sufficiency, will be for approximately $2.2 million, including $400,000 cash (based on performance), and a maximum of 150,000 April common shares to be paid over a three-year period.

Management has also committed itself to expansion onto the mainland U.S. The first move in this direction was the recent acquisition of 200 acres outside of New Haven, Conn., for $300,000. Pending rezoning approval, this project could yield approximately 2,000 garden apartments. Other areas of the U.S. in which management has expressed an interest include New Jersey and Florida.

**Financial Facts**

The company is in good shape financially. Internal lines of credit seem adequate; *no* new financing is expected in the coming 12 months. Working capital, vital for a builder, can be supplemented by short-term loans. April's current ratio was 1.3:1, as of December 31, 1971. With long-term debt almost negligible, interest expenses are extremely low.

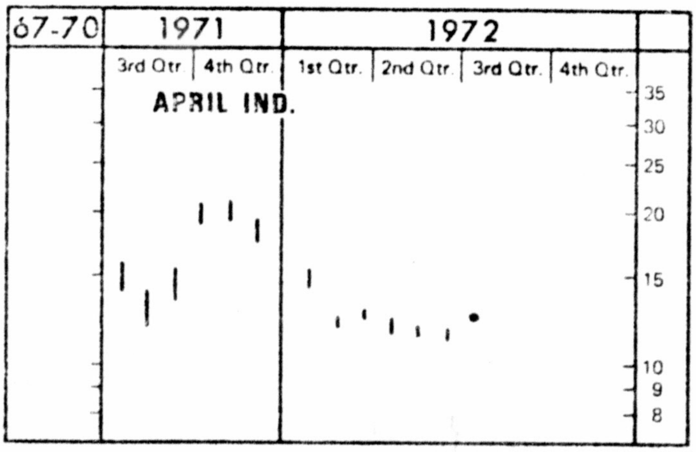
In February, April offered 325,000 shares to the public (217,000 new company shares, and 108,000 from selling shareholders) at a price of $13 a share. Prior to this offering there were only 50,000 shares in the public's hands. The company's proceeds from the offering — $2.45 million — are being used primarily for the further development of a housing project in Manati, a reduction of short-term debt, the construction of 27 luxury apartments in Guaynabo, and the planning and development of 340 acres in Toa Alta.

In the March quarter, April's sales and net income jumped 188% and 127%, respectively, over year-earlier levels (25¢ against 12¢ a share, with more shares outstanding this year). Soon-to-be-released figures for the first-half could come in not too far below 1971 full-year levels (sales and net income were $4.92 million and $.96 million, respectively).

The price of April stock has been relatively depressed since the large secondary of last February. However, as stronger earnings are reported, and as market conditions improve, we think the gradual price strength of recent weeks could continue.

This year we estimate that April's sales will reach the $10 million level, yielding earnings of $1.30 a share, based on a pretax margin of 32.5% (the same as last year), a tax rate of 42.0% (against 40.4% in 1971), and an 18% increase in the number of shares outstanding. Next year, our tentative estimate is for sales and share net of $14.5 million and $1.75, respectively.

To 1975-77, we think April has the management and market necessary for explosive growth. We look for sales of $30 million, yielding earnings of $2.50 a share, based on a pretax profit margin of 28.5%, a tax rate of 42.0%, and 2 million shares outstanding (or 38% above the present level, giving effect to possible future equity financings). Capitalized at 13.5 times (conservative for a home-builder), such earnings suggest a 1975-77 price of 34, or 160% above the present quotation. By 1975, it is management's goal to provide 10% of Puerto Rico's annual home-building needs, whose annual value will then likely exceed $500 million.




Note: We expect April's tax rate to continue near the 40% level, despite future operations on the mainland U.S., where a higher tax rate prevails. Reason: The acquisition of the three Puerto Rican terrazzo floor surfacing companies will provide an offset; they will remain tax-free to 1980.

Since there are now only 380,000 April shares in the hands of the public, investors are cautioned to place buy orders within specified limits at or near the recommended price.

# SPECIAL REPORT OF OFFICER-DIRECTOR TRANSACTIONS
## Period Ended May 10, 1972

Insiders seemed undecided about market prospects for their companies' shares in the latest reporting period — if a comparison of the number of shares bought and sold is a fair indication. As the chart shows, the total number of shares sold was slightly larger than the number bought in the open market or through exercise of options — but only slightly.

On the other hand, if the number of insiders' *decisions* is a fair measure of sentiments, then the balance is bullish. A favorable decision ratio also prevailed in the April reporting period.

**SUMMARY OF THIS REPORT'S INSIDER ACTIVITY**

| | Number of Shares | Number of Individual Decisions |
|---|---|---|
| Bought in Open Market | 526,661 | 173 |
| Bought Via Option | 531,818 | 221 |
| Total Bought | 1,058,479 | 394 |
| Sold or Otherwise Distributed | 1,131,148 | 228 |
| Net Balance for this Report | S 72,669 | B 166 |
| Ratio of Buying to Selling | 0.9:1 | 1.7:1 |
| Option Purchases as % of all Purchases | 50.2% | 56.1% |

B-Buy. S-Sell.

## Stocks Bought

The dollar volume of **Combustion Engineering** purchases was tops in the May period; no less than eight officers of the company exercised options to buy the stock. Officers, directors, and other insiders have traditionally been big holders of **Combustion Engineering** common; they now control about 20% of the outstanding common. Their enthusiasm has been justified. **Combustion Engineering** has managed consistent sales and earnings growth over the past dozen years, and the stock's price reflects such gains.

**Combustion Engineering** makes various kinds of energy equipment: nuclear power plants; fossil-fuel facilities; and industrial and marine boilers. America's severe energy shortage has created a ready market for such apparatus. Superior growth is virtually bound to continue until the booming domestic demand for energy abates. After that (if there is an end to it), **Combustion** could rely on foreign outlets, which now account for about 25% of sales, to keep on an upward track. This isn't all: **Combustion** is also a factor in engineering petrochemical processing plants and about 16% of its volume comes from industrial and residential glass and other building products, another fast-moving area.

Exercise of options also put **American Airlines** on the buy list. Not only did purchases of this equity place it high on the market value chart, but it also paced all others in number of individual buying decisions. Unfortunately, insiders' optimism seems likely to have been a little late in maturing. The stock's price is down around 35% from its May levels. The drop is to be attributed to sudden recognition in the investment community that **American** had been unable to control its costs as well as had been hoped, and that its yield per revenue-passenger mile probably dropped slightly in the second quarter. During that period, costs were up about 10% over year-earlier levels, whereas revenues increased only 8%. In the airline business, leverage is such that a difference of only two or three percentage points between these two indices can spell bonanza or disaster for the line. For **American**, investors seemed to feel the figures spelled ho-hum, and that a gain from 4¢ a share in 1971's second quarter to 9¢ this year did not warrant maintenance of the equity's lofty P/E.

Investors may note, though, that our current 1972 earnings estimate of $1.55 a share (allowing for a 3% fare increase in the third quarter) is still a handsome gain over last year's 13¢. Moreover, if growth in air travel resumes its old annual rate of about 12% — which it could easily do next year — American's longer term growth prospects are good.

The name **MGIC** looks like magic to many of its stockholders. Compiler of an excellent record of earnings growth, this guaranty insurer appears to have a Midas touch. Its stock is now selling at about 55 times this year's estimated adjusted net income per share, after a two-for-one split in May. The value of the stock has rocketed about 25 times since 1967's lows.

Investor enthusiasm may stem partly from the present near-record pace of housing starts: 40% of **MGIC's** residential mortgage insurance is written for new homes.

**The Ten Stocks Most Heavily BOUGHT**

| Stock | Number of Shares | Market Value* |
|---|---|---|
| Combustion Engineering | 53,750 | $ 3.5 million |
| Arlen Realty & Development | 105,000 | 2.1 million |
| American Airlines Inc. | 43,950 | 2.0 million |
| Molybdenum Corp. | 149,622 | 1.6 million |
| Westinghouse Electric | 31,200 | 1.6 million |
| Handleman Co. | 49,360 | 1.5 million |
| Dow Chemical Co. | 15,046 | 1.4 million |
| Dravo Corp. | 36,729 | 1.2 million |
| MGIC Investment Corp. | 19,200 | 1.1 million |
| Federated Dept. Stores Inc. | 17,200 | 0.9 million |

*-At May 4, 1972 price.

**The Ten Stocks Most Heavily SOLD**

| Stock | Number of Shares | Market Value* |
|---|---|---|
| Dayton Hudson Corp. | 272,500 | $ 9.0 million |
| Time Inc. | 80,000 | 4.6 million |
| Host International Inc. | 125,000 | 4.5 million |
| Skyline Corp. | 51,000 | 3.2 million |
| Essex International Inc. | 50,000 | 2.5 million |
| Tropicana Products Inc. | 42,000 | 2.0 million |
| Wallace-Murray | 41,300 | 0.9 million |
| Tandy Corp. | 13,000 | 0.5 million |
| Seatrain Lines Inc. | 40,000 | 0.5 million |
| APL Corp. | 19,300 | 0.5 million |

*-At May 4, 1972 prices.

| Industries in Which Insiders BOUGHT on Balance | |
|---|---|
| Aerospace | Machine Tool |
| Air Transport | Machinery |
| Auto & Truck | Meat Packing |
| Auto Parts | Metals & Mining |
| Baking | Office Equipment/Computer |
| Brewing | Packaging & Container |
| Chemical | Paper |
| Conglomerates | Petroleum |
| Drug | Real Estate |
| Drug Store | Real Estate Invest. Trust |
| Electric Utility | Recreation |
| Electrical Equip./Electron. | Retail-Special Lines |
| Fastener | Soft Drink |
| Formula Feed & Veg. Oil | Telecommunications |
| Household Products | Tire & Rubber |
| Insurance | Tobacco |
| Investment Company | Toiletries-Cosmetics |
| Leasing | |

However, earnings are also aided by a 1971 regulatory change that makes **MGIC** competitive with the FHA in insuring mortgages on houses being resold. **MGIC** has been able to compete very effectively in this area. The company also benefits from the current boom in mobile home sales, insuring credit purchases of those vehicles.

Only one buying decision was made in this issue, but it was a big one: Mr. H.A. Bubb, a director, exercised his option to buy 19,200 shares. No insider reported selling.

## Stocks Sold

**Time, Inc.** is emerging from a period of low earnings, but its *Life* is still on the line. After a four-year decline, in which time the company had to accustom itself to major changes in the publishing industry, earnings rose nicely in 1971, and we estimate another good gain this year — 16% to $3.60 per share. Given this kind of comeback, one might expect to see stronger price action from the equity. But *Life* magazine is still darkening the company's doorway, quite possibly on its way out forever, taking the path of the old *Saturday Evening Post* and *Look*. Value Line estimates that this money-loser may be costing **Time** more than $1 a share. Obviously, such losses will not be tolerated much longer, even for the survival of the company's oldest and most famous publication. We judge that by the end of this year the magazine will either be clearly on the road to profitability or dead. Either way, the major uncertainty overhanging the stock should then disappear.

The major seller in the May period was the Henry Luce Foundation, which unburdened itself of 80,000 shares, or slightly more than 9% of its total holdings. This move may not have been related to the company's near-term earnings prospects, but rather a move dictated by new, stringent laws governing activities of foundations. An officer also rid himself of 600 shares during the period.

| Industries in Which Insiders SOLD on Balance | |
|---|---|
| Agricultural Equipment | Personal Service |
| Bank | Precision Instrument |
| Building | Publishing & Advertising |
| Coal & Uranium | Railroad |
| Distilling | Railroad Equipment |
| Finance | Retail Store |
| Food Processing | Savings & Loan |
| Grocery Store | Shoe |
| Maritime | Steel |
| Metal Fabricating | Textile |
| Mobil Home | Toys & School Supplies |
| Natural Gas | Truck & Bus Lines |

Officers of **Tropicana Products** appear to be taking advantage of their stock's lofty P/E multiple. They were heavy net sellers in the May period: two out of the three officers reporting transactions sold a total of 42,000 shares, while a third bought a mere 400.

To us, it appears that nothing is wrong with **Tropicana's** prospects as a company. But we wonder how long the market will value its shares at the roughly 47 times current fiscal year earnings they command now — particularly since the profit prospects of the company, although excellent, do depend to some extent on unpredictable factors like commodity fruit prices. However, the market does not often quarrel with success, and **Tropicana** has been nothing if not successful. Over the past five years, per share net has risen at an average compound rate of 38% a year. No dividend, though, is yet being paid.

Diversification of family estates was the probable reason that three members of the Dayton family (all of them directors) were heavy liquidators of **Dayton Hudson** stock in the May period. The Daytons parted with a whopping 272,500 shares of the family store, including 45,000 shares sold by Chairman B.B. Dayton.

**Dayton Hudson** is a large retail store chain, whose outlets are well diversified in price ranges, specialties, and locations. Its fortunes are fairly closely tied to consumer spending, which is rising now. Earnings prospects are quite promising for fiscal 1972: we think per-share net will rise from $1.52 to $1.85. Continued good earnings gains are in prospect for the longer term as well. At the equity's current price levels, we regard it as fairly valued. SO

**The Ten Stocks With The Most BUYING Decisions**

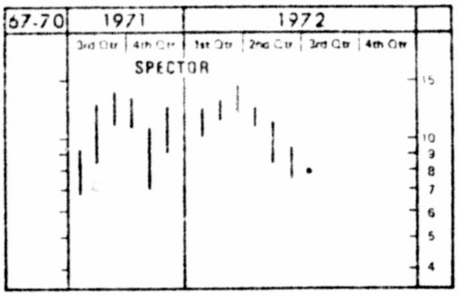
| Stock | Decisions |
|---|---|
| American Airlines Inc. | 16 |
| Dravo Corp. | 11 |
| United Utilities | 9 |
| Combustion Engineering | 8 |
| Westinghouse Electric | 7 |
| Dayton Power & Light | 6 |
| FMC Corp. | 6 |
| General Electric Co. | 6 |
| Warner & Swasey | 6 |
| Owens Illinois Inc. | 5 |

**The Ten Stocks With The Most SELLING Decisions**

| Stock | Decisions |
|---|---|
| Engelhard Minerals & Chemicals | 4 |
| PPG Industries Inc. | 4 |
| Tandy Corp. | 4 |
| BankAmerica Corp. | 3 |
| Continental Illinois Corp. | 3 |
| Dayton Hudson Corp. | 3 |
| General Amer. Oil of Texas | 3 |
| Reading & Bates | 3 |
| Tektronix Inc. | 3 |
| Thompson (J. Walter) Co. | 3 |

# UPDATING RECOMMENDED ISSUES

## Spector Industries (ASE—7¾)
## Recommended 12/24/71 at 11




**CAPITAL STRUCTURE, as of 12/31/71**

**Debt:** $20.4 million
**Pfd. Stock:** None
**Common Stock:** 1,041,553 shares

**Interest on L.T. Debt:** $1.3 million
**Div'd on Pfd. Stock:** None

**Net Worth:** $1.3 million
**Total Capital:** $21.7 million

**Book Value P/S:** $1.27
**Working Capital:** $1.4 million

| | 1970 | 1971 | 1972 |
|---|---|---|---|
| Earnings P/S | d3.74 | .18 | *85* |
| Div'ds P/S | — — | — — | *Nil* |
| P/E Ratio | — — | 51.7 | |
| Div'd Yield | — — | — — | |

Selling well below previous highs, the shares of this revitalized trucking company have the potential for sizable capital gains over the three to five-year pull. But inadequate rate relief has dampened the stock's performance in recent months, and could continue to adversely affect its market action during the period immediately ahead.

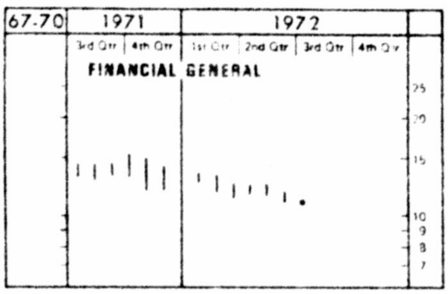
In the first quarter, for example, Spector reported a deficit of 6¢ a share, even though revenues advanced nearly 7% to $29.5 million. Part of the problem was that a delay in the delivery of new equipment resulted in excessive maintenance costs. The major factor, however, was that rate increases permitted by the Price Commission at the beginning of the year did not fully offset the increase in labor costs.

What will happen now? Our present reading is that the trucking companies will get most — but not all — of what they need to offset a second increase in labor costs which became effective July 1, 1972. Thus, the prospects for the second half are reasonably good. But because the year got off to a poor start, we estimate that earnings will not exceed 85¢ a share in 1972. And if the rate relief turns out to be less than we expect, profits could be much lower.

Meanwhile, the company has been able to achieve a substantial reduction in insurance and claim costs, as well as in interest expense; the delivery of new equipment is now back on schedule; efforts are being made to improve labor productivity; and a new computer system is expected to produce more effective utilization of equipment and personnel. Accordingly, we think Spector will be able to improve its profit margins over the next few years. For this reason, we are projecting profits of $2 a share on revenues of $175 million for the 1975-77 period. Capitalizing such earnings at 12 times, we derive a price of 24, triple the recent quote.

Note: An investment company of which Arnold Bernhard & Co., Inc. is an Investment Adviser and Manager, holds in its portfolio securities of this issuer having an market value in excess of $300,000.

## Financial General Bankshares (ASE—11)
## Recommended 10/1/71 at 15




**CAPITAL STRUCTURE, as of 12/31/71**

**Debt:** $9.1 million
**Pfd. Stock:** $2.0 million
**Common Stock:** 4,513,452 shares

**Interest on L.T. Debt:** $0.5 million
**Div'd on Pfd. Stock:** $0.9 million

**Net Worth:** $68.9 million
**Total Capital:** $78.0 million

**Book Value P/S:** $13.83
**Working Capital:** NMF

| | 1970 | 1971 | 1972 |
|---|---|---|---|
| Earnings P/S ❶ | 1.59 | 1.51 | *1.60* |
| Div'ds P/S | .22 ❷ | .23 ❷ | *24* |
| P/E Ratio | 7.0 | 8.8 | |
| Div'd Yield | 2.0% | 1.7% | |

❶ Excludes capital gains and losses.
❷ Plus 4% stock.

The shares of this registered multibank holding company rank only average for probable relative market performance over the next 12 months but offer superior (about 125%) appreciation potential to 1975-77. Financial General's 26 affiliates specialize in retail banking — i.e., consumer, rather than commercial, accounts. Installment loans, which afford returns as high as 18%, are the company's bread and butter. Things are looking up in this area as the general public exhibits a greater willingness to take on more credit obligations.

Nonetheless, the first quarter was no great shakes; FGL netted 40¢ a share against a restated 39¢ for the like period of 1971. The big news was the increase in interest and dividends accruing from tax-exempt securities held in the corporate portfolio. The fact that FGL owned a greater number of these instruments forced the effective tax rate down by almost 60%. Otherwise, earnings would have declined.

Results have yet to be announced, but there appears to have been some improvement in the June quarter. Loan volume was up an estimated 15% over year-earlier levels, and yields firmed, alleviating the profit pressure that occurs when high-cost time deposits are the principal source of lendable funds. For the full year, we look for earnings of $1.60 a share on average shares outstanding, plus common equivalents; results on a comparable basis in 1971 were $1.51 a share.

Over the longer pull to 1975-77, we estimate Financial General's earnings can rise to an annual rate of $2.40 a share. Capitalized at a comparatively modest multiple of 10.5 times, such results would yield a normal average price of 25 three to five years out.

EXHIBIT G - REPORT

April Industries, Inc.
Condominio El Centro 204
Hato Rey, Puerto Rico 00918

# April Industries, Inc.
## Interim Report
## for the nine and three months ended September 30, 1972

3

Exhibit G

The nine months ended September 30, 1972, has been a eriod of continued growth for April Industries, Inc. rough the development of its successful construction rogram.

For the nine month period, your Company reported evenues of $7,033,864, an increase of 90% over the 3,703,955 for the comparable period last year. Net ncome rose by 64% to $1,135,398 from $690,474, with arnings per share of $.80 as against $.55 in the orresponding period last year.

In the three months ended September 30, 1972, April ndustries, Inc. recorded a 13% gain in net income to 366,773 from $324,777 for the comparable period in 971. On a substantially larger number of shares utstanding, the company earned $.26 per share compared with $.26 in the year earlier period. Revenues rose to 3,008,087 from $1,826,996.

Recently the Company acquired zoning for the 340-acre ite under development in Toa Alta, Puerto Rico, in the netropolitan area of San Juan, to accommodate pproximately 2,300 residential units along with additional ommercial zoning for a portion of the property. The Company estimates the total growth revenues generated rom completion of the Toa Alta project will be pproximately $50 million.

In addition, the Company has obtained zoning and pproval of preliminary plans for the 218-acre site in Rio Grande, within the metropolitan area of San Juan, Puerto Rico, for construction of approximately 1,500 single-family nits. The Company estimates that when completed, the levelopment will have a total value of approximately $35 nillion.

During the past three months the Company has devoted a ubstantial portion of its resources to the initial stages of levelopment of approximately 640 acres included in its ecent acquisitions, in particular the obtaining of zoning nd other governmental approvals, and substantial xpenditures for land development. Management is onfident these will generate the continuation of April ndustries' rapid growth trend during 1973.

Respectfully submitted,

Arthur Feder,
President

...ber 10, 1972

# Financial Summary

| | NINE MONTHS ENDED SEPTEMBER 30 | |
|---|---|---|
| | 1972 | 1971 |
| Revenues | $7,033,864 | $3,703,955 |
| Net Income | 1,135,398 | 690,474 |
| Earnings Per Share | $.80 | $.55 |

| | THREE MONTHS ENDED SEPTEMBER 30 | |
|---|---|---|
| | 1972 | 1971 |
| Revenues | $3,008,087 | $1,826,996 |
| Net Income | 366,773 | 324,777 |
| Earnings Per Share | $.26 | $.26 |

# Cherenson, Carroll & Holzer

28 South Livingston Ave. Livingston, N.J. 07039 Phone: 201/992-7600 • 32 Broadway, New York, New York 10005 Phone: 212-425-3370

Public Relations / Corporate Relations

gc: am/72L15 release: immediate

NEW YORK, N.Y., December 15, 1972---April Industries, Inc. (OTC) today announced a restatement of its previously reported unaudited sales and earnings for the nine-month period ended September 30, 1972.

As now restated, operating revenues for the nine-month period were $6,272,806 and net after tax income was $758,411 or $.54 per share. The company previously reported operating revenues of $7,033,864 and net after tax income of $1,135,398 or $.80 per share.

According to management, the reduction in reported nine-month operating revenues and net after tax income is due substantially to the adjustment of certain revenue accruals by management relating to the third quarter ended September 30, 1972. These accruals primarily relate to single-family homes which have been sold but not yet delivered and certain property development work from which income is expected to be realized in 1973 and thereafter. Such adjustment resulted in a restatement of previously announced third quarter earnings of $.26 per share to a loss of $.01 per share.

While the company indicated that it expected the fourth quarter to be profitable, the per share earnings for the year ended December 31, 1972 may be less than those reported for last year.

Exhibit H

Management stated that it continues to be optimistic regarding 1973 prospects when certain revenues deferred from the previously reported third quarter results will be realized.

The company has advised Prel Corporation, with whom it is presently engaged in merger negotiations, of the revised figures. The merger negotiations are continuing on the same basis as previously announced.

Set forth below is a summary of the profit and loss information for the nine-month period ended September 30, 1972 as restated:

| | 9 Months Ended September 30 | |
|---|---|---|
| | 1972 | 1971 |
| Operating Revenues | $6,272,806 | $3,698,331 |
| Cost and Expenses | | |
| Costs Selling & Administrative Expenses and Other Deductions, Net | 4,900,211 | 2,490,103 |
| Interest Expenses | 76,184 | 56,154 |
| Total Cost and Expenses | 4,976,395 | 2,546,257 |
| Income Before Taxes on Income | 1,296,411 | 1,152,074 |
| Provisions for Puerto Rico Income Taxes | 538,000 | 461,600 |
| Net Income | 758,411 | 690,474 |
| Weighted Number of Shares Outstanding | 1,411,862 | 1,255,407 |
| Net Income Per Share | $.54 | $.55 |

* * *

# April Industries, Inc.

August 16, 1972

Mr. Robert Gruber
Arnold Bernhard & Co., Inc.
Value Line Building
5 East 44th Street
New York, N. Y. 10017

Dear Bob,

Excuse my not having written to you before this. My reasons are not very impressive so I will not go into them, but I have been very busy.

I cannot tell you how pleased I and the other people in the company are with the report you made on April.

I have taken the liberty of quoting from your report in a special supplement on April Industries which is being prepared for publication on the 22nd of this month by the San Juan Star.

I expect to be in New York within a few weeks and hope that we can get together at that time.

Best regards,

Abe

AG/ach

P. S. Could we buy some copies of Value Line, about 100!

CONDOMINIO EL CENTRO 204, HATO REY, PUERTO RICO 00918 / TELS. 765-3149 – 766-5097

VALUE LINE SELECTION & OPINION




Volume XXVIII No. 20 In Three Parts – This is Part II February 23, 1973

# THE VALUE LINE VIEW: DOLLAR DOWN, MARKET UP

Moving swiftly and decisively, the Nixon administration has again worked out with the non-Communist world's monetary powers a time-buying solution to the latest monetary crisis. Though the new agreements hardly prompt a chorus of hosannas, they do provide the opportunity — again — to work out lasting solutions to the Free World's monetary problems. The major steps taken by the U.S. Government are as follows:

•The President will ask the Congress to authorize a realignment of currency exchange rates, with a 10% reduction in the par value of the dollar the cornerstone of the new agreements;

•Mr. Nixon will submit to Congress proposals for comprehensive foreign trade policy reform;

•The interest equalization tax will be phased out, as will restrictions on investment abroad by American corporations and strictures on American bank loans to foreigners.

To complement these moves, the Japanese government will allow the yen to float upward to find its own value relative to foreign currencies. It appears highly likely that the value of the yen relative to the former value of the dollar will rise as much as 14% or more. But, thanks to the continued intervention of the Bank of Japan (by buying dollars), the floating yen will exceed that differential relative to the dollar only gradually.

## The Why and Wherefore

In theory, devaluation is a positive step for a nation to take — provided of course that its trading partners don't themselves immediately follow suit, thereby negating the initial action and returning matters to the *status quo*. U.S. Under Secretary of the Treasury, Paul A. Volcker, met with the finance ministers of West Germany, France, Britain, and Italy, as well as a representative of the Japanese Finance Ministry, before proceeding with this action which Uncle Sam could have taken unilaterally. Interestingly, announcement of the agreement came on a Monday rather than a Sunday, allowing no breathing spell before financial markets opened for investors to cast their approving or disapproving ballots.

By devaluing, the United States officially lowered the value (or, as some might say, recognized the already lower value) of its currency relative to that of other nations. Because the new value of the dollar relative to other currencies, such as the German mark, more accurately reflects their intrinsic relative worth, a corporation or a money speculator should now be as willing to hold dollars as marks. Hence the recent run on the dollar is likely to end, provided it is believed that this latest dollar devaluation will be the last for quite some time.

Germans, Frenchmen or Dutchmen can now buy American goods having a 10% higher dollar value than they could before the devaluation took place. In theory, then, these European consumers will increase their purchases of the "cheaper" American goods, and American exports will rise.

Conversely, foreign-made goods will now cost Americans more dollars. As a result, it is hoped that Americans will buy more U.S.-made products, foregoing the dearer goods made abroad. America's imports would decline, and, coupled with rising exports, the effect on the U.S. international balance of trade would be favorable, helping end this country's trade deficit. (The U.S. posted a trade deficit for the first time in history in 1971, and saw that deficit mount to $6.4 billion in 1972.)

A rise in U.S. exports relative to imports also means more jobs for Americans — and fewer jobs in those nations whose exports to the U.S. decline. Herein lies the political sensitivity of the issue. Leaders of nations whose trade positions will suffer as a result of the devaluation probably sought — and received — from the Nixon Administration a *quid pro quo* or two embodied in the termination of the cash flow restrictions discussed above. Further concessions may be contained in the trade reforms that the Administration has stated it will soon announce, although domestic political pressures on the President now seem to be pushing him to build protectionist barriers in spite of his own philosophical leaning to more of a *laissez-faire* trade policy.

There are several flies, however, in the theoretical ointment outlined above. First, a lag of up to two years is possible before favorable effects on trade are felt. In addition, the advantages could be mitigated to the extent that goods involved are "price inelastic." That is, for some American goods sold abroad — large aircraft, for example — lower prices may not encourage additional purchases. Conversely, higher price tags on certain foreign goods sold in the U.S. may not curtail demand. For example, Americans believing — rightly or wrongly — French cham-

*Continued on page 70*

## THE ISSUE AT A GLANCE

•**Devaluation:** President Nixon's recent initiatives in the international monetary field have profound implications for securities markets. An evaluation begins at left.

•**Weekly Tables:** See page 70.

•**Weekly Charts:** See page 71.

•**Stock of the Week:** Libbey-Owens-Ford shares offer a generous dividend and rank highest for year-ahead market performance. For details, see page 72.

•**Special Review:** April Industries (OTC-3⅞). See page 75.

•**Business Forecaster:** See page 76.

**Devaluation**
*Continued from page 69*

pagne superior to domestic, will probably pay the 10% higher price that foreign labels will now likely bear (assuming that exporters do not choose to absorb the differential by holding prices at pre-devaluation rates at the expense of their own profit margins — a policy pursued by Volkswagen in response to the previous American devaluation). To the extent that Americans are to pay higher prices for foreign goods, more dollars will flow abroad, and the devaluation will have no positive effect on the U.S. foreign trade balance. However on balance, the devaluation's effect on America's trade and payments balances will be beneficial, we think.

### Second Time Around

All the above could have been said 14 months ago, when the United States devalued the dollar for the first time since Franklin Roosevelt's initial term. In late 1971, Treasury Secretary John Connally was high in his Texas-style saddle. With the plaudits of the American popular media raining down upon him, he rode herd on the members of the International Monetary Fund until he seemingly had them backed into the corral where the U.S. wanted them. The U.S. devalued, Connally was declared a hero, the monetary crisis cooled, and everyone looked forward to a happy millenium of monetary stability. Yet now the United States has been forced to devalue the dollar again. What went wrong?

What seems to have happened is this: When the change in the official price of gold from its long-standing rate of $35 dollar an ounce finally took place, the event carried with it such trauma, and such relief at its accomplishment, that the parties involved were incapable of subsequent action. A tourniquet had been applied to a serious wound. But no one bothered to take the patient to the hospital to have the wound sewn up.

It was as if the 1971 dollar devaluation was in itself the cure to the U.S.'s monetary problems, instead of a beginning — admittedly a dramatic one — to working out plans for more comprehensive and lasting solutions. The Committee of Twenty subsequently held meetings but, as Treasury Secretary Shultz chided when announcing the latest devaluation, "Progress ... has been too slow and (the work) should move with a greater sense of urgency."

Nor was the United States guiltless. The devaluation in 1971 quite simply was not large enough. The United States continued to deficit spend in the interim; America's trading partners found their export surpluses too delightful to part with. Although the U.S. balance of payments deficit narrowed in the final 1972 quarter, when rising interest rates, a continued Federal budget deficit, and an apparent relaxation of controls on the American economy brought the old inflationary skeleton out of the closet once again, a new round of speculation was set off. The latest devaluation was the inevitable upshot.

In one respect the devaluation of 1971 was successful. Foreign purchases of U.S. securities in 1972 doubled from the previous year to a record $4.56 billion. The favorable trend may accelerate this year provided the monetary crisis is over. There is certainly no shortage of unwanted U.S. dollars abroad that could be used for investment in the U.S.

### Lesson Learned

This time chances are greater that the devaluation will be effective. For one thing, the total devaluation of the dollar over the past 14 months is probably significant enough to affect international trade. For another, the nations involved — the U.S. especially — know that they *have* to come up with a workable system. Currency devaluations are like rich milk shakes. One can taste fine. Two can still be palatable. But a third — help! In more sophisticated terms, if the monetary speculators believe that further dollar devaluations may occur with some frequency, they may again sell dollars, thereby sowing the seeds for, and hastening the day of further turmoil.

For years the U.S. dollar has been overvalued; maintained, that is, at too high exchange ratios relative to other currencies. The underlying causes have been twofold. The industrial countries that have been rebuilt since World War II adopted the efficiencies of scale, the technologies and management techniques pioneered in North America. But benefitting from lower hourly labor costs, these nations rapidly increased the range of products that undersold American-made goods. Meanwhile, American companies were unable to increase their own

*Continued on page 74*

## THE VALUE LINE AVERAGES

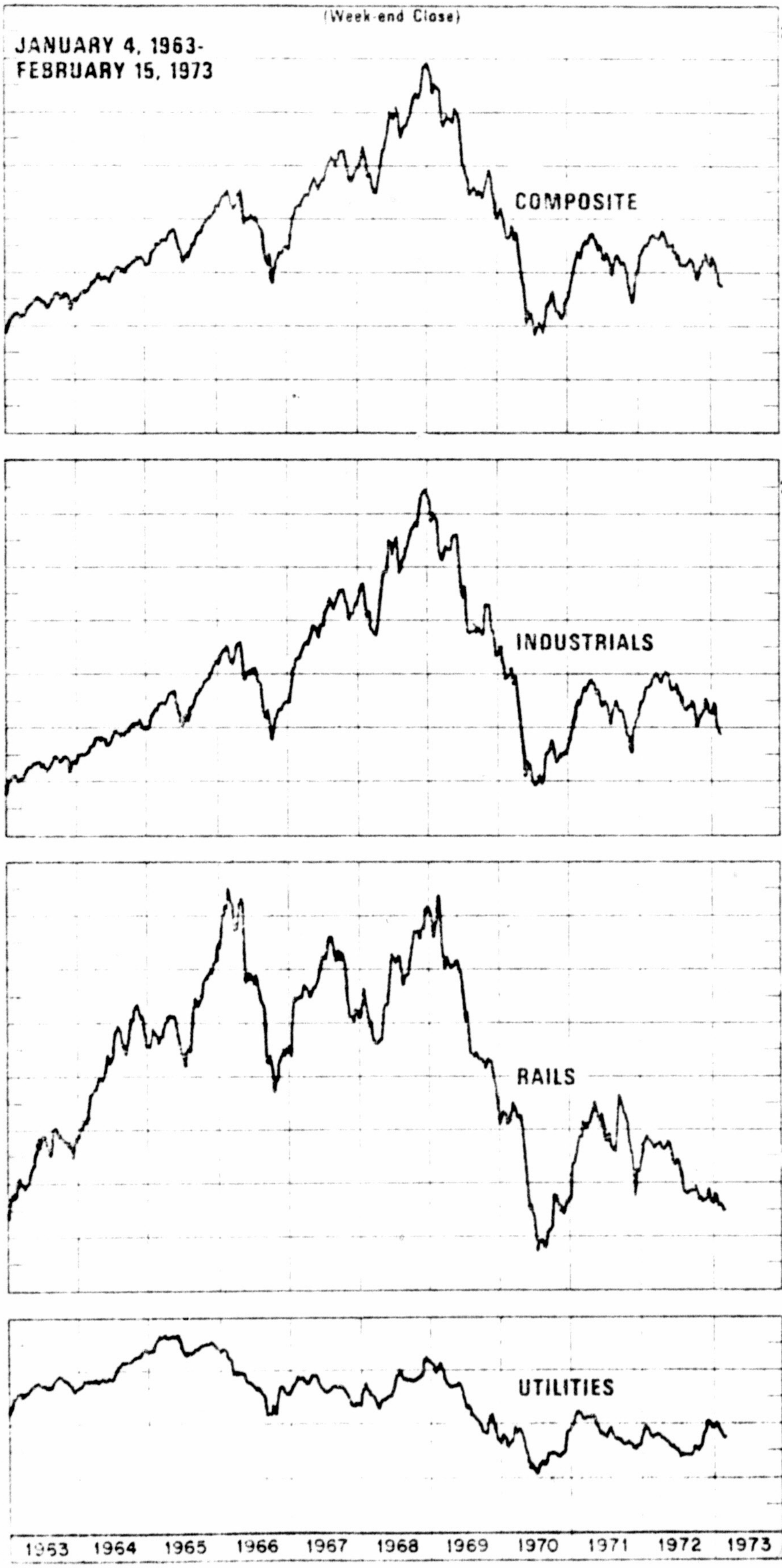
| | Composite | Industrials | Rails | Utilities |
|---|---|---|---|---|
| 2- 5-73 | 106.04 | 108.29 | 100.86 | 95.22 |
| 2- 6-73 | 105.94 | 108.21 | 100.66 | 95.02 |
| 2- 7-73 | 105.19 | 107.38 | 100.07 | 94.78 |
| 2- 8-73 | 104.64 | 106.81 | 98.53 | 94.46 |
| 2- 9-73 | 105.71 | 108.00 | 99.29 | 94.74 |
| 2-12-73 | 106.79 | 109.17 | 99.21 | 95.40 |
| 2-13-73 | 107.18 | 109.[illegible]0 | 100.09 | 95.50 |
| 2-14-73 | 105.90 | 108.18 | 99.77 | 94.98 |
| 2-15-73 | 105.20 | 107.40 | 99.67 | 94.77 |

## RELATIVE PRICE PERFORMANCE LAST SIX WEEKS

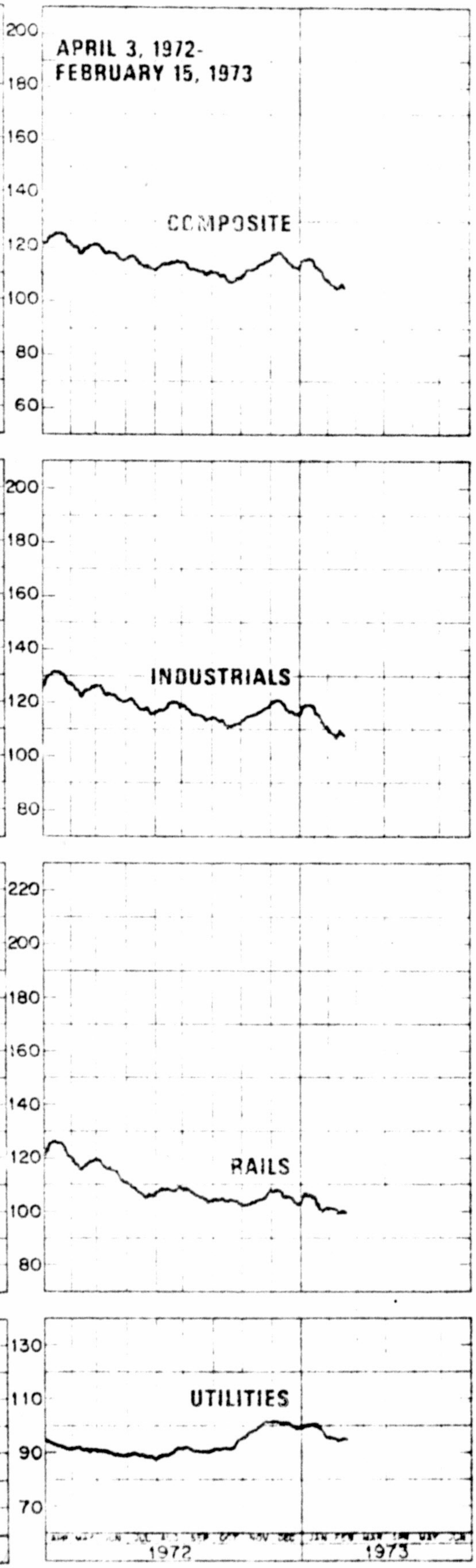
| 12 BEST INDUSTRIES | | 12 WORST INDUSTRIES | |
|---|---|---|---|
| Coal | +20.4% | Shoes | -11.4% |
| Metals & Mining | + 2.3% | Building | -11.6% |
| Tobacco | + 0.5% | Publishing & Advertising | -11.7% |
| Uranium | + 0.3% | Precision Instruments | -11.9% |
| Petroleum | + 0.3% | Retail Store | -12.6% |
| Baking | + 0.2% | Recreation | -13.1% |
| Sugar | - 1.8% | Maritime | -13.3% |
| Real Estate | - 2.0% | Trucks | -13.9% |
| Distilling | - 2.3% | Air Transport | [illegible] |
| Formula Feed & Vegetable Oil | - 2.4% | Mobile Homes | [illegible] |
| Soft Drink | - 3.6% | Savings & Loan | -17.0% |
| Chemical | - 4.0% | Toys & School Supplies | -17.5% |

The corresponding change in the Value Line Composite Average is - 7.9%

## WEEKLY CHART - VALUE LINE AVERAGES




## DAILY CHART - VALUE LINE AVERAGES



# THE ESPECIALLY RECOMMENDED STOCK: LIBBEY-OWENS-FORD

| PERFORMANCE | 12 MOS. | 1 HIGHEST | 3-5 YRS. | 2 ABOVE AVG. | INCOME 12 MOS. | 1 HIGHEST | SAFETY | 2 ABOVE AVG. | P/E 15 YR. MEDIAN | P/E CURRENT | DIV'D YIELD 15 YR. MEDIAN | DIV'D YIELD CURRENT | ESTIMATED PRICE 1975-77 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 1 | | 2 | | 1 | | 2 | 15.5 | 9.0 | 4.8% | 5.6% | 30 (+105%) |

Conservative accounts seeking a good yield and superior market performance over the next 12 months, plus above average capital gains potential to 1975-77 should consider Libbey-Owens-Ford shares. Though the company's fortunes are admittedly affected by cyclical economic swings, this issue offers a current yield of about 5% and carries our highest safety rating.

Investors who wish to incur less risk than the market (L-O-F's Beta is close to 1.0) could check the company's $4.75 cumulative convertible preferred shares (NYSE-78), which provide a yield of just over 6%. Now slightly undervalued according to The Value Line Convertible Survey's ranking system, they offer a high probability of capital gains on three counts. If (as we believe it will) the price of the common stock moves up, the price of the preferred should follow. If long-term interest rates decline (as they will if the Administration's fight against inflation succeeds), the shares should be quoted at higher levels to reflect this situation. Finally, the company has been buying in these shares. Last year 92,000 were so retired; this year up to $8.0 million will be used to purchase about the same number of shares, lending support to the price of the preferred issue. Each share is convertible into 1.5 common shares.

Last year, the market accorded L-O-F shares an average annual P/E ratio of 10.1. The current multiple is about 9.0, well below the 15-year median of 15.5 times. We believe it will move higher in the next few months as investors appreciate the staying power of the company's expansion/recovery.

**New Brooms**

We believe the market has somewhat undervalued the current worth of L-O-F. Barring a general economic disaster, L-O-F share earnings are likely to follow an upward path. The price of the stock is expected to follow suit.

Since 1967, when Mr. R.G. Wingerter was appointed President and Chief Executive Officer, the company has been diversifying into related industrial areas as well as expanding its capabilities in its basic product — flat glass. Although the recession thwarted the corporate objective of providing shareholders with an annual 15% return on equity, the target level is now being reached. Last year, share earnings were $4.22 on sales of $591.1 million. This year, share net of $4.35 or perhaps $4.40 is within reach on volume of $645 million.

We believe the current economic recovery generating brisk demand for L-O-F's three key product lines — flat glass, fluid power components, and molded plastics — will produce increasingly higher sales and share earnings in the period ahead. A high degree of probability exists that our estimate for 1975-77 share earnings of $4.95 could be realized, given a reasonably good economy at that time.

**Halfway Home**

When Mr. Wingerter took over at L-O-F, he realized that corporate diversification would provide greater earnings stability, as well as more opportunities for growth. The long-range goal was to have the company operate in five industrial markets.

The first diversification move took place in 1968, when Aeroquip was acquired. This international producer of fluid power components now contributes about 25% of corporate sales. Two years after the Aeroquip get-together, the company entered the molded plastics business with the acquisitions of Wodall Industries and Dominion Ornamental. (The latter now operates as Dominion L-O-F.) Plastics molding sales now account for about 10% of annual revenues.

So far, so good: two diversification moves, both successful. But with two down, there are still two to go. No plans have been announced yet, and no acquisitions appear imminent. We assume L-O-F will continue to employ the same careful, deliberate, and successful methods in its next two moves as it has in the past.

**Glasswork**

The basic product line has not been neglected. Last year, entry was made into Canada's glass replacement market, with the acquisition of Vantax, a distributor, whose annual sales volume tops $10 million. The deal was done for cash and common (about 114,000 shares).

Diversification in the U.S. begins this year with the start up of three new regional facilities to serve the construction glass markets. These installations will fabricate, temper, and distribute L-O-F's Tuf-flex glass products, zeroing in on architectural and industrial building outlets. The first plant will open in the Chicago area in April. A New York area facility follows at midyear; an Atlanta unit starts up in the late Fall. If these facilities are successful — and it will take several months to find out — more follow-ons are tentatively planned for 1974-75. Since modern structures rely heavily upon specialized glass products, and construction activity is expected to remain at reasonably high levels, the odds are the new endeavor will prove lucrative.

As for production, L-O-F's six-year modernization program in flats glass factories will wind up this year. By mid-summer, the company's sixth, largest, and most automated float glass plant, a $40 million investment, will commence operations in Laurinburg, N.C. It will add 30% to capacity when it reaches peak operations before yearend. The start-up costs, which could run over $1 million (in view of the advanced technological features involved) will likely slow the rate of earnings gain in the last half of this year. However, since the company sees no need for any additional large scale glass production facilities until after 1975, no subsequent earnings drag is likely. Our 1973 earnings estimate allows for reasonable break-in costs on this facility.

**The Money Game**

Last year, capital expenditures ran to about $45 million. Dividends (common, preferred) totaled about $30 million. Internal cash flow (net income plus depreciation) was just under $80 million, leaving several millions of dollars to reduce outstanding long-term debt to the yearend level of close to $20 million. The company has a low debt to equity ratio and can borrow in the unlikely event it might have to.

This year and next, capital expenditures are budgeted at $50 million. Barring any major acquisition, internal cash flow will be sufficient to handle capital requirements, dividends, and modest amounts of maturing long-term debt.

However, the rising capital outlays mean that no significant increase in the common dividend is likely before late next year at the earliest.

L-O-F is becoming less capital intensive, primarily due to its changing product mix. Thus, less equity dilution is likely in periods of expansion, and faster growth is likely as more sales can be supported per each investment dollar. In the recent five-year period, while L-O-F's corporate equity base increased 37%, its net profits rose 58%.

**Competitive Position**

L-O-F is now a strong second to PPG Industries in the glass industry: PPG has a big lead in building industry products. But L-O-F is tops in the automotive market (it supplies GM). Between them, the two giant producers share slightly less than one-half the U.S. market for flat glass. Ford Motor makes its own glass and sells to others; there are four other rivals to reckon with: Guardian Industries, Combustion Engineering's Cermatec Division, ASG Industries, and Fourco Co.

Entry into the glass business requires a large capital investment. Competitive positions typically change slowly. The industry appears subject to technological change only occasionally. The Pilkington float glass process of the 1960's was the most recent technological breakthrough. No major new development is on the horizon. Therefore, we believe L-O-F can readily hold its current share of glass markets as the economy expands.

For this year and next, glass sales are expected to remain very high. Both 1973 and 1974 are expected to be good auto years, construction demand has also remained strong. For the foreseeable future, a rising demand for glass products to meet the needs of an expanding economy seems assured. However, as in the past, there will probably be interim cyclical fluctuations in demand.

As for Aeroquip, prospects are bright for this year and next. The market is competitive, with a high quality product and marketing

Continued on page 71

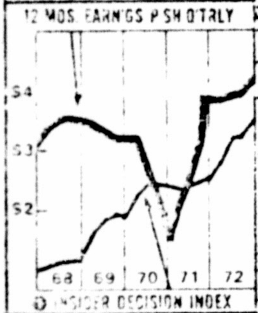


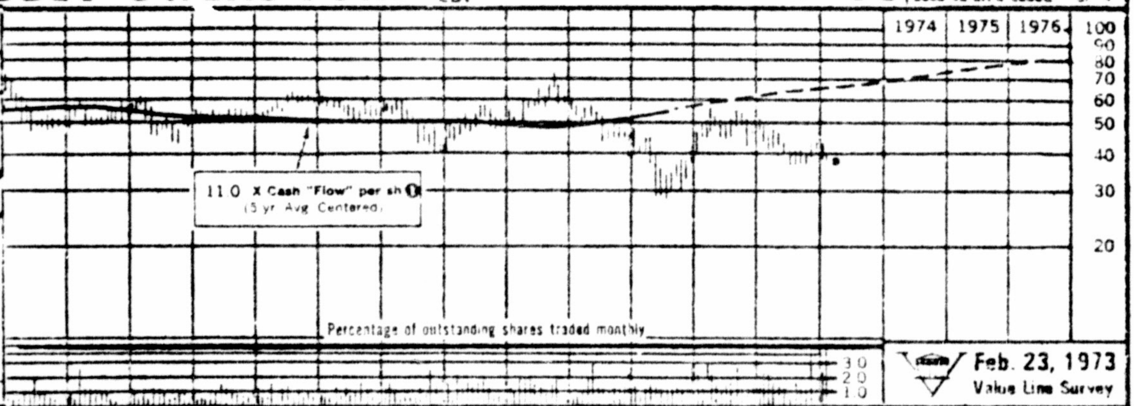
# LIBBEY-OWENS-FORD NYSE-LOF

RECENT PRICE 39 | Next div'd mt'g about: 4/19 | Goes ex div'd about: 5/14

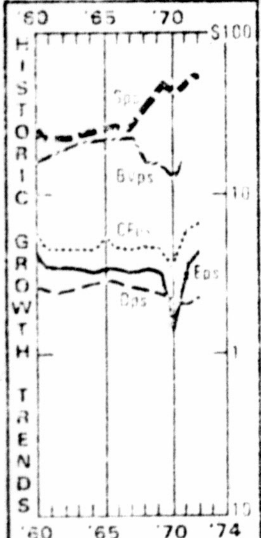
BETA (Price Sensitivity to Market) 1.08

Price Stability (Index) 80
Growth Persistence (Index) 10




Feb. 23, 1973 Value Line Survey




| 1960 | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | Estimates in italics | 1975-77 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 28.09 | 21.34 | 22.23 | 22.92 | 22.35 | 26.41 | 25.10 | 24.19 | 39.52 | 42.47 | 40.15 | 49.44 | 54.27 | *58.90* | Sales per sh | *67.30* |
| 5.50 | 4.53 | 4.67 | 4.75 | 4.62 | 5.12 | 4.30 | 4.19 | 4.92 | 4.71 | 3.31 | 6.14 | 6.45 | *7.00* | Cash "Flow" per sh | *7.30* |
| 4.18 | 3.34 | 3.62 | 3.75 | 3.26 | 3.66 | 3.33 | 3.09 | 3.50 | 3.19 | 1.45 | 3.96 | 4.17 | *4.35* | Earnings per sh | *4.95* |
| 2.55 | 2.40 | 2.45 | 2.60 | 2.95 | 2.95 | 2.95 | 2.80 | 2.80 | 2.30 | 2.20 | 2.00 | 2.15 | *2.20* | Div'ds Decl'd per sh | *2.75* |
| 2.00 | 0.67 | 1.47 | 0.65 | 3.81 | 2.18 | 2.49 | 1.71 | 2.02 | 4.68 | 4.07 | 2.57 | 4.11 | *4.55* | Cap'l Spending per sh | *4.50* |
| 18.82 | 19.54 | 20.76 | 21.98 | 22.29 | 23.10 | 23.59 | 23.95 | 16.82 | 16.24 | 13.32 | 16.02 | *19.30* | *21.35* | Book Value per sh | *27.50* |
| 10.47 | 10.41 | 10.44 | 10.47 | 10.48 | 10.52 | 10.57 | 10.60 | 10.63 | 10.56 | 10.70 | 10.74 | 10.95 | *10.95* | Common Shs Outst'g * | *11.00* |
| 13.0 | 16.1 | 14.4 | 14.4 | 17.8 | 15.4 | 14.9 | 16.0 | 16.5 | 15.6 | 25.4 | 12.3 | 10.1 | | Avg Ann'l P/E Ratio | *15.5* |
| 4.7% | 4.5% | 4.7% | 4.3% | 5.1% | 5.2% | 6.0% | 5.7% | 4.8% | 5.5% | 6.0% | 4.1% | 5.1% | | Avg Ann'l Div'd Yield | *3.4%* |
| 294.1 | 222.2 | 232.1 | 240.0 | 239.5 | 278.0 | 265.4 | 256.4 | 420.1 | 448.3 | 429.7 | 530.9 | 594.4 | *645* | Sales ($mill) | *740* |
| 34.6% | 34.3% | 31.4% | 32.7% | 27.9% | 27.2% | 22.9% | 23.3% | 21.6% | 13.2% | 11.9% | 19.7% | 20.1% | *19.0%* | Operating Margin | *13.0%* |
| 6.3% | 5.7% | 4.7% | 4.3% | 5.2% | 5.2% | 3.2% | 3.4% | 3.8% | 3.7% | 4.3% | 5.0% | 5.2% | *5.0%* | Depreciation Rate | *4.5%* |
| 54.4% | 51.0% | 47.5% | 48.7% | 45.6% | 44.5% | 41.8% | 41.3% | 48.0% | 45.4% | 32.9% | 41.4% | 44.6% | *45.0%* | Income Tax Rate | *45.0%* |
| 43.8 | 34.8 | 37.8 | 39.3 | 34.1 | 38.5 | 35.2 | 32.8 | 43.6 | 40.1 | 22.6 | 49.5 | 52.6 | *53.8* | Net Income ($mill) | *61.5* |
| 14.9% | 15.6% | 16.3% | 16.4% | 14.3% | 13.8% | 13.3% | 12.8% | 10.4% | 9.0% | 5.3% | 9.3% | 8.9% | *8.3%* | Net Income Margin | *8.3%* |
| -- | -- | -- | -- | -- | -- | -- | -- | 9.3 | 8.8 | 42.2 | 26.1 | 19.9 | *19.0* | Funded Debt ($mill) | *45.0* |
| 197.0 | 203.5 | 216.8 | 230.2 | 233.7 | 243.1 | 249.4 | 253.9 | 313.2 | 313.3 | 296.5 | 311.1 | *341* | *364* | Net Worth ($mill) | *440* |
| 75.6 | 79.7 | 85.9 | 83.7 | 78.8 | 82.8 | 70.7 | 79.2 | 123.0 | 106.7 | 111.9 | 124.8 | *127* | *130* | Working Cap'l ($mill) | *140* |
| 22.2% | 17.1% | 17.4% | 17.1% | 14.6% | 15.8% | 14.1% | 12.9% | 13.7% | 12.6% | 7.6% | 15.2% | *15.0%* | *14.5%* | % Earned Total Cap'l | *13.5%* |
| 22.2% | 17.1% | 17.4% | 17.1% | 14.6% | 15.8% | 14.1% | 12.9% | 13.9% | 12.3% | 7.6% | 15.9% | *15.5%* | *15.0%* | % Earned Net Worth | *14.0%* |
| 61% | 72% | 68% | 69% | 91% | 81% | 88% | 91% | 83% | 90% | 135% | 57% | 57% | *56%* | % All Div'ds to Net Inc | *61%* |

**CAPITAL STRUCTURE** as of 12/31/72

Debt $19.9 mill. Interest $1.4 mill.
Pfd Stock $129.8 mill. Pfd Div $6.2 mill.

1,293,255 shares $4.75 Series A cum. (no par), convertible into 1.5 shares of common

Common Stock 10,952,824 shares

| Calendar | QUARTERLY SALES ($ Millions) Mar. 31 | June 30 | Sept. 30 | Dec. 31 | Full Year | EARN'GS AS REPORTED (per sh.) Mar. 31 | June 30 | Sept. 30 | Dec. 31 | Full Year | QUARTERLY DIVIDENDS PAID Mar. 31 | June 30 | Sept. 30 | Dec. 31 | Full Year |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1969 | 121.8 | 110.3 | 104.5 | 111.7 | 448.3 | .96 | .80 | .50 | .93 | 3.19 | .70 | .70 | .70 | .70 | 2.30 |
| 1970 | 112.6 | 125.2 | 98.9 | 92.0 | 429.7 | .44 | .92 | .02 | .21 | 1.45 | .70 | .60 | .60 | .30 | 2.20 |
| 1971 | 140.2 | 139.3 | 123.3 | 128.1 | 530.9 | 1.21 | 1.19 | .65 | .92 | 3.97 | .50 | .50 | .50 | .50 | 2.00 |
| 1972 | 147.2 | 146.3 | 136.8 | 161.1 | 594.4 | 1.14 | 1.24 | .70 | 1.14 | 4.22 | .50 | .55 | .55 | .55 | 2.15 |
| 1973 | *168* | *174* | *144* | *159* | *645* | *1.20* | *1.30* | *.75* | *1.10* | *4.35* | .55 | | | | |

(1) See Explanation of Terms p. 1005 (2) Div'd payment dates Mar. 15, June 15, Sept. 15, Dec. 15 (3) Includes Aeroquip (4) Excludes intangible assets of $22.3 million, equal to $2.09 a share (5) On average shares * In millions at year end, adjusted for all stock div'ds and splits

### Devaluation

*Continued from page 70*

productivity sufficiently to offset the wage differentials.

With wide divergences in productivity growth rates between leading industrial countries, maintenance of fixed exchange rates between currencies became increasingly difficult and artificial, ultimately leading to monetary crises. Unfortunately, the search for better ways to balance international trade and money flows has hardly seemed a top priority of the major industrial nations.

Through much of the 1960's, the economies of the United States, West Germany, and Japan were booming. Though caches of dollars were building up abroad, who could argue with prosperity? Besides, American consumers like, among other things, Volkswagens and Sony products. In what ultimately proved an unsuccessful effort to balance trade and financial flows, using their hoard of U.S. dollars, West Germany and Japan accepted, or bought up, billions of dollars of U.S. Treasury securities, as counterpart to the autos, consumer electronics, textiles, and other goods bought by the American consumer. By last week West Germany and Japan were exchanging marks and yen rather than goods for dollars, and the simmering crisis came to a boil.

The Lincoln's Birthday exchange ratio shifts should go a long way — though not all the way — to restoring balance, particularly the dollar/yen shift of about 14%. Combined with efforts by U.S. business to increase productivity, the shifts should produce a narrowing of the American trade deficit. Too, with uncertainties about exchange rates removed for the present, foreign money (and U.S. money resident abroad) may again be invested in the U.S.

**Investment Play**

U.S. companies which are major exporters of goods are likely to benefit from the devaluation, as are those hurt by import competition. American companies that have profitable operations abroad will find happily that their overseas earnings are worth more dollars, and hence make a greater contribution to consolidated earnings.

Companies which import or use large quantities of imported components will suffer, unless their suppliers are willing to absorb much of the costs resulting from the devaluation.

On February 2, 1972, Selection & Opinion discussed the nation's major auto and truck makers, and at that time recommended investments in American Motors (NYSE-8⅛), Chrysler Corp. (NYSE-37), Ford Motor (NYSE-70), General Motors (NYSE-74), and International Harvester (NYSE-33). The devaluation is a plus for all these companies. All are likely to outperform the year-ahead market. The automakers stand to benefit from this devaluation, as from the last, to the extent that imports of foreign cars will be still less competitive with domestic-made autos. Too, all of these companies have extensive foreign operations, the profits of which will be worth more dollars. (However, the Big Three automakers do sell some cars produced abroad in the U.S. These vehicles will now be more expensive to make relative to those produced domestically.) International Harvester garnered nearly 50% of its net income in 1972 outside the U.S., and to the extent these earnings were generated in countries whose currencies don't follow the dollar, the company's profits will benefit.

The American steel industry has been especially vulnerable to foreign imports in recent years. More than 40% of the U.S. foreign trade deficit in 1972 could have been laid on the doorstep of foreign steel mills. Japanese and West German steel will now be more expensive when sold in the U.S., though which particular American companies, if any, will receive a sizable fillip is for now uncertain. The specialty steel makers have been hardest hit by importers in the past. Thus Allegheny Ludlum Industries (NYSE-26), and Carpenter Technology Corp. (NYSE-24) could benefit most from the devaluation. Both are good choices for 12-month market performance and offer worthwhile current income.

A number of other companies with overseas operations could, of course, also garner some added revenues as a result of the dollar devaluation. But it is important to realize that any benefits derived from the events of the past week will have lasting significance only if the United States Government and the other Free World Monetary Powers face up to the weaknesses in the financial arrangements between nations of which the devaluation is symptomatic. At home, Mr. Nixon must return to the business of making Phase III work, and must continue his efforts to keep the budget in line, while the Federal Reserve Board strives to do the same *vis a vis* bank credit. If these policies of restraint are successful — and we think they will be — then chances for the current economic advance to proceed in an orderly fashion will be heightened. The United States can then attempt to work out lasting agreements with other monetary powers that will allow this country to improve further its trade and payments balances, hopefully without a retreat to protectionism. To strive for less could invite chaos.

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### Libbey-Owens-Ford

*Continued from page 73*

acumen essential to success. L-O-F is endowed with both. New facilities are going up at home and abroad to meet future demand: in Wythville, Virginia for engineered rubber products, as well as in Canada, France, and Sweden for assembly and distribution. A joint venture is underway in Japan to supply engineered rubber products. Aeroquip is upgrading its manufacturing operations in England and Germany; operations are being expanded in Mexico and Brazil.

The plastics molding group is being expanded. Hoffman Industries was recently acquired. It supplies molded parts to Chrysler and Whirlpool. To meet the expanding demands of the furniture industry for decorative parts, a new plant will be on-stream in Virginia by midyear.

No union labor contracts are scheduled for negotiation until October of 1974, when the glass workers sit down to bargain.

L-O-F has a continuing cost-reduction program. Further, the new major facilities are designed to produce at the lowest possible costs, employing automation and computerized technology. The Laurinburg plant is the latest example. Union cooperation is essential to such progress and is achieved in the bargaining process. It appears that

# REVIEW OF A PREVIOUSLY RECOMMENDED SPECIAL

**April Industries**
**(APRL/OTC-3 7/8)**
**1975-77 Potential Value:-See text**
**Appreciation Potential:-See text**
**Estimated Dividend Yield: Nil**
**Recommended 8/4/72 at 12½**
**Performance Record:-70%**
**Change in Dow:-3%**

The pending acquisition of April Industries by Prel Corporation (ASE — 8) is a distinct disappointment to both April shareholders and the financial community. The terms (two April shares for one of Prel's) are so much of a disappointment, in fact, that a stockholder recently filed suit charging that there existed a conspiracy on the part of April's management to defraud the public shareholders (April's management owns over 70% of the stock). The legal counsel of both firms believe the suit to be without merit. But, as discussed below, Prel has excellent prospects. Current April shareholders may participate to their benefit in the growth of April's parent-to-be.

As we stated in our review late last year, April was confronted with an accelerated cash squeeze together with an uneven flow of supplies. The first factor put a crimp in working capital, the second delayed full receipt of income needed to counter the cash squeeze. In effect, April committed that cardinal sin of small companies: it expanded more rapidly than its resources would allow.

On the other hand, Prel's situation was just the opposite. It had recently received a $50 million unsecured credit line from First National City Bank, replacing a $20 million line from Bankers Trust. The interest rate is at the prime rate plus 1¼ points. In terms of supplies, Prel has subsidiaries (some of which were garnered via the acquisition route) which act as its suppliers. Prior to the April deal, Prel's latest acquisition was that of Mach Lumber Company. This company, the largest lumber wholesaler in New Jersey, provides a stable source of raw materials for Prel as well as giving it a foothold in the home improvement market.

Thus Prel and April seem to be an excellent fit: Prel has an ample supply of the two ingredients which April is lacking.

What can April shareholders who accept Prel shares expect in 1973 and beyond? Prel recently concluded its best year on record. We think the company earned about $1.20 a share. In 1973, with April earning enough to prevent any dilution of Prel's per share income, Prel will likely earn about $1.60 a share (on 75% more shares, including those issued in the April deal).

Whatever the merits of the pending lawsuit, it could delay the actual date of the acquisition. But, as matters presently stand, the deal appears likely to go through soon after the end of the first quarter.

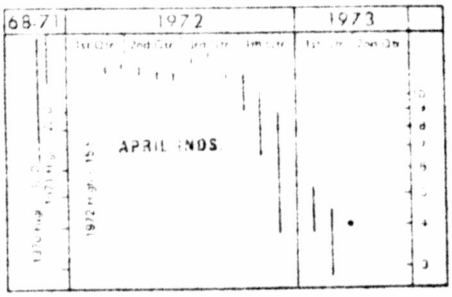
Prel has excellent and ample land inventories (a major purchase in Florida is now under negotiation), and very strong financial resources. Besides the aforementioned new credit agreement, the company has arranged for permanent conventional mortgage financing of $37 million so that, should mortgage money get tight, the company itself could help home buyers purchase company-built homes. With new earnings record on the horizon, we believe that, once the April deal is consummated, Prel's shares will be capitalized at a rate more in line with the company's achievements and potential. (In early 1972, Prel's shares sold as high as $30.) We believe that Prel's shares have the potential to far outperform the average stock in the year ahead. For the moment, we are suspending longer term projections for April, pending developments on the merger situation.

**Business:** April Industries, Inc. is principally engaged in the planning and building of developments primarily of moderately-priced housing units in Puerto Rico. Company will likely be acquired by Prel Corporation in April, 1973. April shareholders will receive one Prel share for each two April shares. The acquisition is presently being contested by a minority shareholder. Construction capabilities include single-family residences, garden apartments, and high-rise condominiums. Company, which is incorporated in Delaware, is the resulting entity of an April 1971 merger of a Utah corporation of the same name. Insiders control 74% of shares outstanding. President: Arthur Feder. Address: Condominio El Centro 204, Hato Rey, Puerto Rico 00918.

**CAPITAL STRUCTURE, as of 12/31/71**
**Debt:** $.06 million
**Pfd. Stock:** None
**Common Stock:** 1,445,125 shares **as of 2/10/72**
**Interest on L.T. Debt:** $.004 million
**Div'd on Pfd. Stock:** None
**Net Worth:** $1.49 million
**Total Capital:** $1.55 million
**Book Value P/S:** Approx. $2.64 a share ❶
**Working Capital:** $1.16 million

| | 1971 | 1972 | 1973 |
|---|---|---|---|
| Earnings P/S | .77 | .55 | N/ |
| Div'ds P/S | — — | — — | — — |
| P/E Ratio | 23.6 | | |
| Div'd Yield | — — | — — | — — |

❶ As of 2/10/72



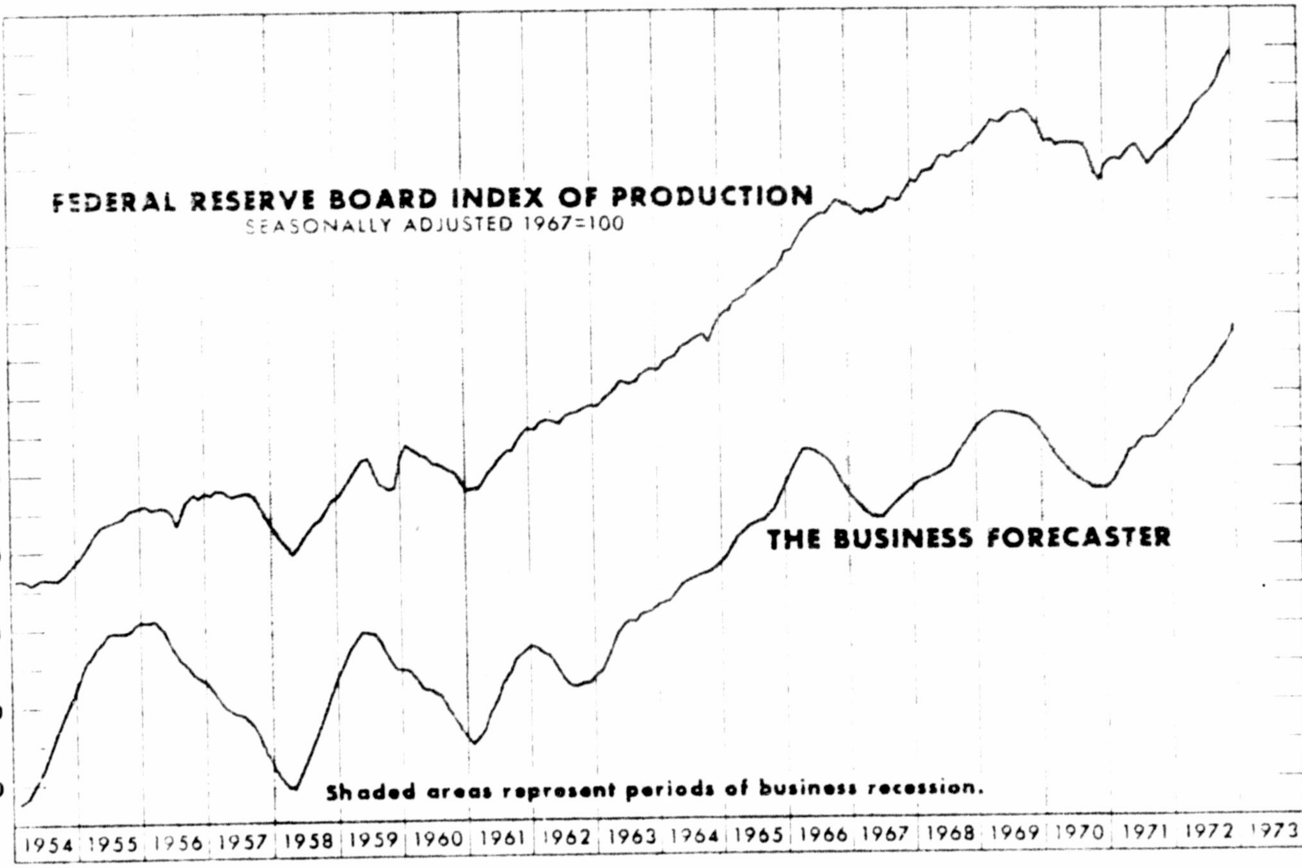

L-O-F can hold its own in labor relations and productivity.

**Earnings Outlook**

Demand in the important markets which L-O-F serves is excellent this year and likely to be so next year. U.S. auto industry sales are expected to equal or exceed last year's record output of 8.8 million cars and 2.5 million trucks. More to the point, General Motors (the company's top customer) produced 4.77 million cars last year. The world's largest industrial organization will be out to beat its own record this year.

Next year, demand for motor vehicles and L-O-F automotive glass should be sustained, not only by the expanding economy but also by cyclical factors. Scrappage rates for older autos, made during prior high production years, are now moving higher. This indicates greater replacement buying starting later this year. Specifically, the 1965-67 models are now entering big-

*Continued on page 76*




## Libbey-Owens-Ford

*Continued from page 75*

scrappage years. Likewise, commercial construction activity is increasing as capital expenditures move up, suggesting continuing demand for industrial glass products and plastic components. Last year's boom in new housing starts means furniture output will grow — to the benefit of L-O-F's plastic molded parts.

To recap, we believe that L-O-F shares, either the common or preferred, are of interest to conservative accounts. Although this company will be subject to cyclical fluctuations of the industrial economy, an upswing is now in progress. The company is well managed and has clearly defined growth objectives. Finances are excellent, the dividend is secure. The stock, now undervalued, is currently ranked highest for probable relative market performance over the next 12 months.

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS ACTION DETERMINATION, ON BEHALF OF DEFENDANT, PARKER
(Filed December 21, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------------x

SAMUEL PARKINSON, as custodian for ANDREW PARKINSON, JONATHAN STAEBLER and PETER B. MYGATT,

Plaintiffs,

-against-

APRIL INDUSTRIES, INC., ARTHUR FEDER, ALEX M. PARKER, MORRIS DEMEL, NATHAN APTEKAR and STANLEY W. SILVER,

Defendants.

---------------------------------------------x

AFFIDAVIT

73 Civ. 1887 (WK)

STATE OF NEW YORK )
) SS.:
COUNTY OF NEW YORK )

RICHARD J. SCHAEFFER, being duly sworn, deposes and says:

1. I am associated with the law firm of DORNBUSH MENSCH MANDELSTAM & SCHWARTZ, Attorneys for Defendant ALEX M. PARKER, and submit this affidavit in opposition to plaintiffs' motion for an order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure determining this action to be a class action.

NATURE OF ACTION

2. The plaintiffs allege that APRIL INDUSTRIES, INC. (hereinafter referred to as "April") and each of the individually named defendants artificially inflated the earnings and prospects

of April by the use of false and misleading statements and press releases and thereby manipulated the market price of the stock of April, a public corporation, whose shares are traded over-the-counter. Plaintiffs allege that said manipulation took place starting on June 1, 1972 and continuing through December 18, 1972.

3. Attached to the affidavit of EDWARD LABATON, ESQ., Attorney for Plaintiffs, in support of this motion, as Exhibit G, is a financial summary issued by April on or about November 10, 1972 which relates to the three and nine month periods ending September 30, 1972. It is alleged that this financial summary was false and misleading in that it misrepresented the revenues, net income and earnings per share of April for both the three and nine month periods ending September 30, 1972 and that said financial summary caused an artificial inflation of the price of April stock.

4. The plaintiffs further allege that the defendants caused the issuance of certain false and misleading statements to various securities analysts with the intention that said statements be disseminated to the investing public. In this regard, attached to the affidavit of EDWARD LABATON, in support of this motion, are five distinct reports by securities analysts, which reports were issued between August 1, 1972 and October 25, 1972 and which reports relate to April.

5. The plaintiffs fail to meet the requirements of Rule 23(a) of the Federal Rules of Civil Procedure which reads as follows:

> Rule 23. Class Actions.
>
> (a) Prerequisites to a Class Action.
>
> One or more members of a class may sue or be sued as representative parties on behalf of all if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

The language of Rule 23 clearly presupposes the existence of a class and the plaintiffs have failed to establish the existence of such a class based upon the allegations of the complaint. In the complaint the plaintiffs have alleged that, both directly and indirectly, April had issued financial reports, predictions and releases which were false and misleading. Reference to the exhibits attached to the LABATO affidavit clearly shows that the statements published to the public were issued over a two and one-half month period beginning on August 1, 1972. Furthermore, each of the exhibits is a separate and distinct report and there is no evidence that they were part of a common plan or scheme to deceive the investing public or that they were issued based upon information supplied by April. Also, the very existence of these distinct reports belies the argument that the claims

of the representative parties are typical of the claims of the alleged class.



6. Rule 23(a)(1) requires that the class be so numerous that joinder of all members is impracticable. In this regard Exhibit A to the LABATON affidavit in support of this motion is a letter from the NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. purportedly showing a trading volume of 457,200 shares between June 1, 1972 through December 15, 1972. The plaintiffs offer no further proof as to the number of individuals in the alleged class. Their failure of proof in this regard is critical to the class action issue. Plaintiffs have the burden of establishing the numerosity of the class and have failed so to do. It might well be the case that the number of members of the alleged class is not so numerous such that joinder would be impracticable or, on the other hand, it might be the case that the members of the alleged class are so numerous that a class action would be unwieldy and impossible to manage. The letter from the NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. lacks sufficient probative value on this issue.

7. Rule 23(a)(2) requires that there are questions of law or fact common to the class. In this case, based upon the various alleged misrepresentations and individual questions of reliance thereon, the plaintiffs have failed to establish that there are sufficient questions of law or fact common to the class.

8. Rule 23(a)(3) requires that the claims of the representative parties are typical of the claims of the class. Once again plaintiffs have failed to establish that their claims are typical of the claims of the alleged class in that there are allegations of separate and distinct misrepresentations, some purportedly of an oral nature, and there is no showing of a common pattern or scheme upon which the class relied. Furthermore, reference to the complaint establishes that plaintiffs MYGATT and STAEBLER purchased their shares on July 16, 1972 and as a matter of law they cannot serve as representative parties for any individuals who purchased stock prior to that date.

9. Rule 23(b)(3) requires that the court find that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other methods for the fair and efficient adjudication of the controversy. Based upon the alleged myriad representations, in both printed and oral form, it is clear that common questions of law or fact do not predominate over questions affecting only individual members and that for this reason the class action is not superior for the fair and efficient adjudication of the controversy. At the very least, there would be a multitude of individual matters which would have to be separately litigated after the class action issues were determined in order to resolve the rights and liabilities of each of the members of the alleged class not

least among which would be the question of the reliance of each of the individual plaintiffs and based upon this factor the class action would not be the best method for the fair and efficient adjudication of the controversy.

WHEREFORE, I respectfully request that plaintiffs' motion determining this action to be a class action be denied and that the class action should be dismissed, together with such other relief as is proper.

RICHARD J. SCHAEFFER

Sworn to before me this

17 day of December, 1973.

Notary Public

ILENE STERN
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-3333603
Qualified in Queens County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SAMUEL PARKINSON, as custodian for Andrew Parkinson, Jonathan Staebler and Peter B. Mygatt,

Plaintiffs,

- against -

APRIL INDUSTRIES, INC., ARTHUR FEDER, ALEX M. PARKER, MORRIS DEMEL, NATHAN APTEKAR and STANLEY W. SILVER,

Defendants.

ORDER

73 Civ. 1887

Plaintiff moves for an order declaring that this action be maintained as a class action, pursuant to Fed. R. Civ. P. 23(c)(1). The motion is granted.

The complaint asserts that defendants, in violation of Rule 10b-5 of the Securities Exchange Act of 1934, artifically inflated the earnings and prospects of defendant April Industries, Inc. ("April") by the use of false and misleading statements and press releases and thereby manipulated the market price of April stock. The proposed class represents persons who purchased shares of stock between June 1, 1972 and December 18, 1972, the period during which the statements were disseminated.

The complaint asserts that beginning in June 1972 and continuing through December 18, 1972 April issued financial reports, predictions, and releases directly and through securities analysts with the intention that the statements made to the securities analysts be disseminated to the investing public and

with the knowledge that the investing public would rely upon said reports as well as those disseminated directly by April. Among the statements disseminated were predictions that April would have net profits of $1,890,000 in 1972 and $2,554,000 in 1973, and that earnings in each of the first, second, and third quarters of 1972 were substantial.

The complaint alleges that the above reports were false and misleading, and that on December 17, 1972 April corrected its report for the nine-month period ending September 30, 1972 and showed a loss for the three months ending September 30th. On April 11, 1973, April announced that it had sustained a net loss of $250,270 in 1972.

The named plaintiffs acquired their stock at prices ranging from 9-1/8 to 13-5/16. Two of the named plaintiffs sold their stock at a price of 4-3/4, and one retains his stock, which at the commencement of this action was allegedly trading at $2 a share.

Plaintiffs assert that the proposed class action meets the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3). All defendants, in two separate sets of papers, oppose this assertion.

Rule 23(a)(1)

Defendants contend that even though plaintiffs have stated that more than 450,000 shares of stock were traded within the period in question, plaintiffs have not offered any proof as to the number of the class, but rather attempt by inference

to assume that there are at least 500 members in the class. 
However, in view of the volume of shares traded and the fact that there was widespread dissemination by investment analysts of reports on April, it appears more than reasonable to assume that several hundred persons bought the stock during the relevant period, i.e. that "the class is so numerous that joinder of all members is impracticable". Further, as Judge Tyler has stated: "the failure to state the exact number in the class does not preclude the maintenance of a class action". Fischer v. Kletz (S.D.N.Y. 1966) 41 F.R.D. 377, 384. See also Siegel v. Realty Equities Corp. (S.D.N.Y. 1972) 54 F.R.D. 420, 424.

Rule 23(a)(2)

Defendants contend that class action status is inappropriate in that plaintiffs' cause of action is based upon oral misrepresentations which were made by one or more of the defendants to various securities analysts and which subsequently formed the basis for published reports by these analysts (upon whom purchasers then relied). Defendants point to a deposition of plaintiff Staebler which indicates that his purchase of the securities and the purchase by plaintiff Mygatt were based, not on statements of April management, but rather solely on information furnished him by one Robert Gruber, a securities analyst employed by Value Line Selection and Opinion. In addition, plaintiff Parkinson's deposition apparently states that he based his purchase on newspaper reports of corporate earnings and material read in Value Line Selection and Opinion. Defendants argue that it is unreasonable to expect that others who purchased April stock during the period in question also relied on Mr. Gruber's estimates, and thus that there are not "questions of

law or fact common to the class".



However, defendants' emphasis on the fact that certain statements may have been made orally to certain securities analysts overlooks the fact that plaintiffs' claim is also based upon a report which April disseminated directly to the public and in which April reported substantial earnings for the three months ending September 30, 1972 (which was later corrected to indicate a loss for those three months). In addition, according to plaintiff's theory, any oral statements that were made to securities analysts and brokers were made with the intent and purpose that they be disseminated to the public. During the latter part of 1972, various market reports and newspaper articles appeared which projected April's profits for 1972 in remarkably similar terms, from which plaintiffs infer that there was a single source - namely defendants - for the information contained in these reports.

On the basis of these facts, there appear to be "questions of law or fact common to the class".

In Siegel v. Realty Equities Corp. (S.D.N.Y. 1972) 54 F.R.D. 420, for example, plaintiff alleged that he and members of the class bought securities of one of the defendants in the open market and were misled by the artifically inflated market prices of those securities at the time of the purchase. In the Siegel case, plaintiff listed twelve separate documents regarding the financial condition and results of operation of the corporate defendant. In Siegel, the plaintiff did not recall seeing or reviewing any of the specific documents which he claimed were false and misleading, except for one financial statement. Judge

Tenny nevertheless certified the case to be a class action, holding that if plaintiff could sustain the burden of proving that

> "defendants issued false statements concerning their financial condition and paid dividends in contravention of their agreements with creditors, and that these activities caused the market price of REC securities to be inflated, a jury might find it reasonably foreseeable that such inflated prices would induce the public to purchase REC stock, and subsequently to suffer damages when the misrepresentations were uncovered. In any event, whether such two-step reliance satisfies the causation requirement is a common question of law to be resolved by the trial judge. * * *
>
> As to common questions of fact, 'misrepresentations made over a period of time "will not preclude a class action provided they were made pursuant to a common scheme."' * * *
>
> "Like standing dominoes, . . . one misrepresentation in a financial statement can cause subsequent statements to fall into inaccuracy and distortion when considered by themselves or compared with previous statements. Such a possible close causal relationship between the various alleged misrepresentations in . . . [a corporation's] financial statements leads to the conclusion that members of the class are interested in 'common questions of law and fact.'" * * *" (at 425)

In <u>Siegel</u>, the court distinguished <u>Moscarelli</u> v. <u>Stamm</u> (E.D.N.Y. 1968) 288 F. Supp. 453, upon which defendant Parker relies, on the basis that in the <u>Siegel</u> case

> "all of the alleged misstatements are set forth in documents addressed to the general public rather than to individual shareholders. . . . The instant case is one of those alleging 'a fraud perpetrated on numerous persons by the use of similar misrepresentations', thereby rendering it 'an appealing situation for a class action. . . !" (at 425)

Here, as in Siegel, all of the misstatements are set forth in documents addressed to the general public. Here, it is claimed that the defendants used the medium of securities analysts and brokers and dealers rather than a direct mailing to the public. Under the circumstances, it certainly appears that there are questions common to the proposed class.

Rule 23(a)(3)

Defendant Parker contends that the claim of the representative parties are not typical since the proposed class purports to include all persons who bought or sold stock in April commencing on June 1, 1972, while plaintiffs Mygatt and Staebler only purchased their stock on about July 16, 1972. However, in view of plaintiffs' allegations that April began issuing misleading financial reports in June 1972, defendant Parker's argument that the choice of June 1, 1972 is arbitrary seems ill-founded. Plaintiffs' claims certainly appear typical.

Rule 23(a)(4)

The court has no doubt that the interests of the proposed class will be adequately protected. A key test of adequacy is the vigor with which plaintiff and his counsel prosecute the action.

Suffice it to say, the court has already been impressed with the vigor of plaintiffs' attorney - even though in at least one previous case before me his substantial efforts did not result in the declaration of a class action.

Rule 23(b)(3)

While defendants have argued that the provisions of subsection (b)(3) are not satisfied, the court finds these

contentions to be without merit, and finds

> "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

Accordingly, plaintiffs' motion to declare this action a class action is granted.

SO ORDERED.

Dated: New York, New York

July 1, 1974.

Whitman Knapp

WHITMAN KNAPP, U.S.D.J.

DEFENDANTS', EXCEPT PARKER, NOTICE OF APPEAL FROM ORDER GRANTING CLASS ACTION STATUS (Dated July 25, 1974)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - -x

SAMUEL PARKINSON, as custodian for Andrew Parkinson, JONATHAN STAEBLER and PETER B. MYGATT,

Plaintiffs,

-against-

APRIL INDUSTRIES, INC., ARTHUR FEDER, ALEX M. PARKER, MORRIS DEMEL, NATHAN APTEKAR and STANLEY W. SILVER,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - -x

NOTICE OF APPEAL

73 Civ. 1887

NOTICE IS HEREBY GIVEN that the defendants, APRIL INDUSTRIES, INC., ARTHUR FEDER, MORRIS DEMEL, NATHAN APTEKAR and STANLEY W. SILVER, above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the order declaring that this action be maintained as a class action , pursuant to Federal Rule of Civil Procedure 23, entered in this action July 2nd, 1974.

Dated: July 25, 1974.

WILBUR G. SILVERMAN
Attorney for Defendants,
April Industries, Inc., Arthur Feder,
Morris Demel, Nathan Aptekar and
Stanley W. Silver
88-11 169th Street
Jamaica, New York 11432
Tel. 212-297-7177

DEFENDANTS', EXCEPT PARKER AFFIDAVITS AND EXHIBIT IN OPPOSITION TO PLAINTIFFS' MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
--------------------------------------------X

SAMUEL PARKINSON, as custodian for
ANDREW PARKINSON
JONATHAN STAEBLER and PETER B. MYGATT,

Plaintiffs,

-against-

APRIL INDUSTRIES, INC.
ARTHUR FEDER, ALEX M. PARKER,
MORRIS DEMEL, NATHAN APTEKAR and
STANLEY W. SILVER,

Defendants
--------------------------------------------X

STATE OF NEW YORK) ss.
COUNTY OF QUEENS)

WILBUR G. SILVERMAN, being duly sworn deposes and says:

That he is the attorney for all of the defendants herein, except the defendant, Parker, and is fully familiar with the facts hereinafter set forth.

That on October 19,1973, deponent as a attorney for the aforementioned defendants took the deposition of the plaintiff, Staebler. That the following constitutes some of the questions posed to the said plaintiff, Staebler, and the answers given to said questions.

p. 8,1 25

"Q. Mr. Staebler, on or about July 16th, did you acquire two hundred and twenty-five shares of the common stock of the defendant, April Industries, Inc.?

"A. July 16,1972.

"Q. '72?

"A. Yes.

"Q. Did you purchase it through a broker?

"A. I'm a little uncertain how to respond to that question. Can I consult with my counsel for a moment?"

..........

p. 9 1 12



"A. I made the purchase...let's put it this way. The purchase was made in the name of a friend of mine who is a co-plaintiff in this suit, through a broker.

"Q. Who was that co-plaintiff?

"A. Peter Mygatt.

"Q. Through what broker did you make the purchase?

"A. He made the purchase. I can't remember the name of the broker offhand.

"Q. But, he made the purchase of two hundred and twenty-five [illegible] in your name?

"A. No, it was in his own name, but I had the beneficial [illegible] through an understanding we had.

"Q. [illegible] ultimately issued, [illegible] stock issued [illegible] your name?

"A. Issued?

"Q. The certificates, were they issued in your name?

"A. I'm not sure that either one of us ever saw any certificates. [illegible] really don't know the answer to that question.

"Q. Did you pay for the stock?

"A. Yes, I did.

"Q. To whom did you make payments?

"A. To Peter Mygatt."

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p. 10 1 [illegible]

"Q. When was the first time you had ever heard of the corporation [illegible], Inc.?

"A. I don't remember the exact date, [illegible] not have been very long before I [illegible] the purchase.

"Q. What was the [illegible] by which you [illegible] aware of the existence of this corporation?

"A. Conversations with a security analyst.

"Q. Which security analyst did you have conversation with?

"A. A man named Robert Gruber.

"Q.    Is he in business for himself, or is he connected with some organization?

"A.    He's connected with an organization.

"Q.    What organization?

"A.    Are you talking about the present time or then?

"Q.    Then.

"A.    The Value Line Investment Survey.

"Q.    Can you fix the approximate time when you discussed April Industries, Inc. with this gentleman?

"A.    It would have been within I'd say during the two week period before I bought the stock, probably."

********

p.12 l 2

"Q.    Did you know Mr. Gruber or any member of Value Line, prior to the date on which you had this conversation?

"A.    Yes, I did. I know Mr. Gruber.

"Q.    For how long had you known him before that time?

"A.    About two and a half years.

"Q.    Had you discussed with him the purchase of other securities, prior to that time?

"A.    Yes, I did.

"Q.    Had he recommended any securities to you, prior to that time?

"A.    Well, he had. Perhaps I should clarify our relationship a little. I don't think it would be improper. We were both, we used to be together, security analysts at the same company, the Value Line, so we discussed, as a matter of course, many investments for our own accounts, for other people's accounts, as a matter of business."

*******

3.

p.19 L 22

"Q.    Were you still employed by Value Line when Mr. Gruber discussed April Industries, Inc. with you?

"A.    Yes, I was.

"Q.    Did Mr. Gruber also discuss April with Mr. Wyatt?

"A. No.

"Q. Did you discuss April Industries with Mr. Mygatt, before you discussed it with Mr. Gruber?

"A. No.

"Q. I didn't hear you.

"A. No.

"Q. Did you discuss April Industries with Mr. Mygatt after you spoke with Mr. Gruber?

"A. Yes, I did.

"Q. How long after having discussed April Industries with Mr. Gruber, was it that you made your purchase?

"A. Well, I think I suggested before that it was about two weeks.

"Q. And before making the purchase, did you yourself do any analysis of April Industries?

"A. Mr. Labaton: I am not sure what you mean by analysis. Independent analysis?

MR. SILVERMAN: Yes, independent security analysis.

"A. I would answer that, no, because I relied entirely on the statements oral and written that Robert Grubermade to me in making my purchase.

"Q. What written statements did Mr. Gruber make to you?

"A. He didn't make any written statements to me individually. He made written statements to the public at large through the Value Line Investment Survey and those I believe will probably be part of the record. I can describe them, if you like.

"Q. Can you tell me what date the publication was?

"A. Not without looking at the records here.

"Q. If you have them, you may look at them.

"A. The original report the Value Line published, is dated August 4,1972.

"Q. August 4,1972, yes?

"A. Yes.

"Q. What oral statements did Mr. Gruber make to you concerning the company?"

********

p. 22 L 2

"A. I can't remember word, but the substance of everything he said agreed exactly with what he wrote in his reports and amounts to a series of statements that he believed very strongly that April Industries was a strong corporation, that it was well financed, and it was well managed, that its future was bright, and that its stock was a good purchase at that time.

"Q. Was that the basis for your having made the purchase?

"A. Yes."

******

p.22 L 22

" Q. Was it on the basis of what he told you orally, that you bought the stock on July 16,1972?

"A. Yes, it was.

"Q. If you can, I would like you to tell me specifically, instead of generally, those items about April Industries, Inc., which you found in Mr. Gruber's statement to you, to be pertinent to your purchasing the stock?

"A. It would be difficult for me to explain in much more detail relying only on my memory than to repeat what I said before. I had great respect for Mr. Gruber and I still do, and I think that respect was founded on my knowledge of his past performance in analyzing corporations, so I was willing to accept his general statements about the situation without looking, I guess, terribly hard at whatever facts and figures he might have been willing to present to me.

"Q. Do you remember any of the facts and figures he presented?

Mr. Labaton: Were you finished with that answer?

THE WITNESS: No, I wasn't finished.

"Q. Go ahead. I will withdraw the question until you are finished.

"A. Robert Gruber, on a number of occasions, explained to me using notes that he had taken on a trip to Puerto Rico sponsored by April Industries, what he believed to be the financial position of the corporation, what he believed to be the nature of its sales prospects based on projects then being completed in Puerto Rico, and what he belived to be the characteristics of its management based on meeting most of the members of its management personally. I don't remember at this moment anymore detailed facts which I'm sure I did have communicated to me. such as what he believed to be the firm's current position, what he believed to be its long term debt structure, or any other material of that detailed nature."

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p.24 L 14

"Q. What did Mr. Gruber tell you the financial position of the company was, when he spoke to you?

"A. In general, he thought it was very strong."

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p.24 L 25

"Q. I want to get the facts as you know them.

"A. Based on his examination of work projects then nearing completion in Puerto Rico, Mr. Gruber felt that sales prospects for April Industries were excellent."

p. 23 L 22

"Q. Before purchasing April Industries stock, did you discuss April Industries with any other security analyst?

"A. No.

"Q. Was your purchase of April Industries stock predicated solely or in part on the information gleaned by you from Mr. Gruber?

"A. Yes.

"Q. Do you have any knowledge as to whether Mr. Mygatt consulted with any security analyst concerning April Industries, prior to his

purchase of April Industries stock?

"A. You mean other security analysts aside from me?

"Q. Yes.

"A. I have no knowledge. To the best of my knowledge, he discussed it only with me, but I can't state that categorically as a fact.

"Q. How long after having discussed it with you, were the purchases made?

"A. My recollection is not very long, maybe a week, maybe less."

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p. 37 L 2

"Q. Mr. Staebler, do you know of any statements made by any of the defendants in this action orally, between June 1972 and December 1972--

MR. LABATON: I don't understand the question.
MR. SILVERMAN: I haven't finished the question.

"Q. On which you relied in purchasing the shares of stock, which you did?

MR. LABATON: On which he relied directly, statements made to him?
MR. SILVERMAN: Yes.

"A. Statements made to me?

"Q. Yes.

"A. No. I never met personally any of the defendants in this action.

"Q. Do you know of any such statements that the defendants made orally to others on which you have relied?

"A. Yes. I described them.

"Q. The ones you now refer to are those which you say were made to security analysts?

"A. Including Mr. Robert Gruber.

"Q. Including Mr. Robert Gruber?

"A. Yes."

******

p. 38 L 23

"Q. Specifically, then, what statements that was made by any member of management at either the June or October meeting of analysts, was it that you relied on in buying the stock?

MR. LABATON: Objection to that question. I instruct the witness not to answer.
MR. SILVERMAN: It comes directly within the issues raised by the pleadings.
MR. LABATON: No, it does not. The witness has testified that he relied upon a report by Mr. Gruber which was given--
MR. SILVERMAN: I direct your attention --
MR. LABATON: May I finish, sir?
MR. SILVERMAN: I'm sorry.
MR. LABATON: This witness has testified that he believes those statements were given to Mr. Gruber by management, and you can ask him-- ad infinitum about his conversations with Mr. Gruber, but I will not permit you to ask him about conclusions of law nor will I permit you to [illegible] into hearsay statements."

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p.42 L. 12

MR. SILVERMAN: I want to know from this witness what statements that were made, he relied upon. That is my question.
MR. LABATON: He has testified as to the statements that he relied upon and those are the statements made by Mr. Gruber to him. This witness is not required to invent evidence for the purpose of suiting defendants' counsel.
MR. SILVERMAN: I am not asking him to invent evidende. I am asking him to sustain the allegations in the complaint.
MR. LABATON: The allegations of the complaint are sustained. They do not have to be sustained by the witness himself, who does not have persona knowledge. There are many other sources that both of us can acquire as to the statements which were made. He has testified that he relied upon statements made by Mr. Gruber which he believes to have been imparted to Mr. Gruber by management."

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p.41 L. 24

"Q. Mr. Staebler, in buying April stock when you did, were you relying on any of the statements Mr. Gruber related to you as having been relayed to him by management at the June 1972 meeting of analysts in Puerto Rico?

"A. Let me say my answer to that--

"Q. Either you did or you didn't.

MR. LABATON: Let him answer the question.

"A. If I understand the question, it's no, but let me explain how I understand the question. Let me explain in more detail what I mean by no. I relied on statements made by Robert Gruber. I don't recall that at any time he ever tried to do anything more than summarize collectively all the statements made to him by all the members of management that he met in Puerto Rico.

MR. LABATON: As I understand your answer, it is not no, but yes, in fact you relied upon management as they then conveyed their--

"A. Right. There wasn't any specific statement of management that I could have relied on."

*****

p. 45 L15

"Q. Did Mr. Gruber indicate to you that any member of management had given him an estimate of earnings for the year 1972?

"A. Well, I recall I answered all these questions by saying at this moment, I don't recall any of the detailed facts on which I relied on Mr. Gruber's advice, so to speak, in making the purchase.

"Q. What did you rely in?

"A. Relied on my knowledge of his character and his judgement as a security analyst.

"Q. That is the beginning and the end of it?

"A. No. I relied on that insofar--let me rephrase it all. I know Robert Gruber. I knew he had a good record, I knew he was a man of sound judgement, I knew that he had conversed personally with the members of April management, and had been very much impressed with what they told him about the company. I relied on my belief that what he told me about the company was substantially what they told him about the company, which was public knowledge at that time because of the meeting of analysts in Puerto Rico. and, frankly, I don't think that anything more or less detailed than that would have stuck in my head even if he had discussed it, which he might well have, because I was used to making quick judgments for my own personal account, without going into great detailed analyses such as I tried to for the customers of Value Line. 9.

"Q. Is it fair then to state that you bought the stock on the basis of the recommendation of Mr. Gruber, rather than on relying on specific items of what you learned with the prospective

earnings, past earnings, long term debt, and other items?

MR. LABATON: I object to the question. Instruct the witness not to answer in its present form, because it does not accurately summarize the testimony to the extent it may be a proper question, it was just answered by the answer to the last question.

Q. I will ask you this. Did you rely strictly on the recommendation made by Mr. Gruber?

MR. LABATON: Objection, the question has been asked and answered.
MR. SILVERMAN: Let him answer it again.
MR. LABATON: No, sir, I will not.
MR. SILVERMAN: Off the record.
MR. SILVERMAN: You are not going to let him answer that question?
MR. LABATON: That is right. It was answered two questions ago. I don't see the point to permitting repetitious questions.

Q. What I am trying to ascertain, Mr. Staebler, is whether in purchasing the April stock, you relied on figures with respect to estimates of net profit, whether the company had or did not have long term debt, its past earnings and expected future earnings on the one hand, or whether your reliance on Mr. Gruber's evaluation was the thing which caused you to buy the stock?

MR. LABATON: You may answer that.

A. I'm not going to do anymore than rephrase what I have already said. If Mr. Robert Gruber told me in substance that he thought April Industries was a good buy, at that time, even if he had said no more, and I don't mean to say he said no more, I would have assumed, among other things, that he had made a detailed financial analysis of the corporation, based on information that was public knowledge, that that analysis would have taken into account the existence or non-existence of long term debt, the entire capital structure of the company for that matter. What he reasonably believed to be its future prospects in sales and net earnings, based on conversations with management, and any other matters that are generally believed to be relative to security analyses.'

However, in making my decision to purchase April stock, I probably relied on detailed facts and figures about April Industries that he supplied to me alleging that they had been supplied to him

by management of April Industries. However, at this moment, I can't recollect any of the details of the numbers that he supplied me except One Dollar Thirty Cents a share estimate of net earnings for 1972."



From the foregoing it is readily ascertainable that this plaintiff in purchasing the stock of the corporate defendant did not rely on statements of management but rather on the extreme confidence in a single analyst, Robert Gruber, and assumptions drawn that the said Robert Gruber obtained his information from management. In as much as Mr. Gruber himself by letter dated August 2,1972 has taken full responsibility for the estimates set forth in his analysis and forecasts, any assumptions on the part of the plaintiff Staebler, with respect to such estimates and forecasts were wholly unfounded.

Thus, the plaintifs' contention that the facts alleged in the complaint are applicable to all of the members of the class can not be sustained as it is unreasonable to expect that others who purchased stock in the defendant corporation during the periods set forth in the complaint relied on Mr. Gruber's expertise, his projections and estimates. Furthermore, in the unlikely circumstance that all such members of the class did rely on Mr. Gruber's analysis, then, on Mr. Gruber's own statement that the forecasts and projections were his, no liability can be imputed to the defendants.

Since it is apparent also, that the plaintiff Mygatt, purchased his stock as a result of his conversations with the plaintiff, Staebler, he to must have relied on Mr. Gruber's analysis rather then on any statement made by any member of management.

A deposition conducted by the deponent of the plaintiff Parkinson disclosed that he purchased the company's stock on or about November 29,1972 and allegedly purchased the same relying on a newspaper report of the company's quarterly earnings report on or about Nobember 10,1972, showing the quarterly earnings for September 1972 and the Value Line Reports of August 4,1972. He further testified "that he knew that most interum statements are not audited published in the newspaper". Other than the foregoing said plaintiff received no other information prior to his purchase of the company's stock concerning the allegations set forth in the complaint.

It is clear again that this plaintiff in relying on information contained in the Value Line Publication was relying on the opinions, projections and estimates of Mr. Robert Gruber rather than those of management. In so far as he allegedly relied on newspaper publication of unaudited quarterly reports, there is no proof that such unaudited reports contained willful, knowledgable misstatements.

Accordingly, plaintiffs' motion should be denied and the class action as such should be dismissed together with such other relief as is proper.

Sworn to before me this

day of November 1973

WILBUR G. SILVERMAN

LAURIE A. RUSSO
NOTARY PUBLIC, State of New York
No. 41-4502293
Qualified in Queens County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

------------------------------------------x

SAMUEL PARKINSON, as custodian for ANDREW PARKINSON, JONATHAN STAEBLER and PETER B. MYGATT,

Plaintiffs,

-against-

APRIL INDUSTRIES, INC., ARTHUR FEDER, ALEX M. PARKER, MORRIS DEMEL, NATHAN APTEKAR and STANLEY W. SILVER,

Defendants.

------------------------------------------x

STATE OF NEW YORK )
COUNTY OF QUEENS ) ss:

ARTHUR FEDER, MORRIS DEMEL, NATHAN APTEKAR and STANLEY W. SILVER, each being duly sworn, deposes and says:

That each deponent is a defendant herein and was an officer of the defendant, APRIL INDUSTRIES, INC., at the times referred to in the complaint herein.

This affidavit is made in opposition to plaintiffs' motion for an order declaring this action to be maintained as a class action.

This action is based on allegations that the company and its officers issued false and misleading statements, in violation of Section 10b and Rule 10b-5 thereunder, of the Securities and Exchange Act, which resulted in artificially inflating the price of the corporate stock.

The alleged false and misleading statements are alleged under two categories. In one category it is alleged that certain unaudited quarterly reports of the company showed profits. After independent auditors audited the company's books, they required that items originally credited as profits be transferred to different accounts, which thereby required a restating of the figures showing a loss. Immediately upon the defendants' being inform-

ed of the restated figures, they were published and disseminated. The unaudited figures as set forth in the quarterly reports had been prepared by a Certified Public Accountant, upon whom management, including deponents herein, relied in the publication of said unaudited reports. Said unaudited figures were not knowingly inaccurate when published, but were published in good faith. Neither the company nor any deponent obtained any financial, pecuniary or any benefit from the publication of said unaudited reports, directly or indirectly. No purchase or sale was made during the period of time referred to in the complaint, by any deponent herein, directly or indirectly, nor did the company buy, issue or sell any of its shares during said period. It follows that there was no purpose in artificially attempting to inflate the price of the stock.

In the second category, it is alleged that false and misleading projections of earnings were given to Security Analysts and Financial Reporters between August and October, 1972. Each deponent categorically denies that he or any member of management furnished false and misleading information to any Security Analyst or Financial Reporter, as one or more of deponents attended each of said meetings. Each deponent categorically denies that he or any member of management at any Security Analysts' meetings furnished false or misleading information to any analyst or financial reporter, nor did any deponent or any member of management make any forecast or projections of the company's prospects.

Each deponent is informed and verily believes that the plaintiff, STAEBLER, testified in a deposition in this case that in purchasing the company's stock, he relied solely on the oral opinion of one ROBERT GRUBER, an analyst for VALUE LINE SELECTION & OPINION, given to him prior to an article written by him in August, 1972. Similarly, that plaintiff, PARKINSON, in his depo-

testified
sition,/that he had read Mr. Gruber's article in the aforementioned publication.

Said analyst, GRUBER, in a letter to deponent, ARTHUR FEDER, on behalf of the company, dated August 2, 1972, stated:

> "You may be especially interested in our forecast of your company's prospects for the period of the early Seventies. We take full responsibility for these estimates, of course. They are based upon our evaluation of the current evidence and on certain assumptions regarding the future that are fully disclosed in the review."

The question is then presented as to whether plaintiffs have sustained their burden that that the facts presented are the same as to all members of the class. If all members of the class relied on Mr. Gruber's estimates and assumptions, then clearly, plaintiffs do not make out reasonable probability of success, as the estimates and assumptions were not those of the defendants. On the other hand, if the other members of the class relied on other factors, there is no proof that the facts and law are the same as those of the plaintiffs.

It follows that the motion should be denied.

WHEREFOR, deponents, and each of them, respectfully pray that an order be made and entered herein, denying plaintiffs' motion declaring this action to be maintained as a class action; dismissing this action as a class action; together with such other and further relief as to the Court may seem just and proper.

ARTHUR FEDER

MORRIS DEMEL

NATHAN APTEKAR

STANLEY W. SILVER

Sworn to before me
this day of November, 1973.

THE VALUE LINE INVESTMENT SURVEY

THE VALUE LINE BUILDING
5 EAST 44TH STREET, NEW YORK, NEW YORK 10017
TELEPHONE 212 MU 7-3965

PUBLISHED BY ARNOLD BERNHARD & CO., INC.

100a

Mr Arthur Feder, President
April Industries
Condominio [illegible] Suite 204
Hato Rey, Puerto Rico

August 2, 1972

Dear Mr Feder:

As you may know The Value Line Investment Survey is a weekly, internationally distributed supervisory service. As part of the service, we also recommend a new Special Situation each month.

As chief executive officer, you may wish to see our Special Situation recommendation covering your company. Six copies are enclosed with our compliments. You may be especially interested in our forecast of your company's prospects for the period of the early Seventies. We take full responsibility for these estimates, of course. They are based upon our evaluation of the current evidence and on certain assumptions regarding the future that are fully disclosed in the review.

Follow-up reports, which will be published at quarterly intervals in The Value Line Survey, will be sent to you.

To make certain that news concerning your company is reported accurately and to avoid inconveniencing you with frequent requests for data, we would appreciate your retaining the following name on your regular mailing list to receive all financial reports annual meeting notices, proxy statements, press releases, and other material that would be helpful to us in compiling factual information on your company:

Arnold Bernhard & Co.
Research Department
5 East 44th Street
New York, N.Y. 10017

We will be very grateful for your cooperation in this matter. You can well understand that this arrangement would be of mutual benefit, especially in regard to financial releases that would ensure proper and timely reporting on your company in The Value Line Investment Survey.

Your comments or criticisms on our analysis of your company will also be appreciated. We would be particularly grateful for any corrections you may have to offer on factual statistical data presented in this report.

Very truly your,

Robert G. Gruber
Analyst

# REPLY AFFIDAVIT AND EXHIBITS IN SUPPORT OF PLAINTIFFS' MOTION TO MAINTAIN ACTION AS A CLASS ACTION

United States District Court
Southern District of New York

---------------------------------x

Samuel Parkinson, et al., :

Plaintiffs :

-against- :

April Industries, Inc., et al., :

Defendants :

---------------------------------x

73 Civ. 1887 (WK)

Reply Affidavit

State of New York )
) ss.:
County of New York)

Edward Labaton, being duly sworn, deposes and says:

1. I submit this reply affidavit in support of plaintiffs' motion to declare this action a class action.

2. To supplement the extracts of the transcript of plaintiff Staebler set forth in Mr. Silverman's affidavit, the following questions and answers appear at pp. 42 and 43 of the deposition of Mr. Staebler:

Q Let me ask you this, then, Mr. Staebler. Did you rely on any alleged representation of management that April would have net profits of One Dollar and Thirty Cents a share after taxes in 1972?

A. Yes.

Q Did Mr. Gruber tell you somebody in management had made such an estimate?

A Yes.

3. In addition, plaintiff Parkinson in his deposition testified that he relied on the Value Line Report (moving affidavit Exhibit F) and the report of April's earnings which appeared in the Wall Street Journal or the New York Times indicating that April's earnings for the three months ended September 30, 1972 were $366,773, and its earnings for the nine months ended September 30, 1972 were $1,135,398. Mr. Staebler testified that prior to the commencement of the action he did not know Mr. Parkinson.

4. Defendant Parker questions the validity of the figures supplied by NASDAQ. The National Association Securities Dealers established NASDAQ as a computerized system that collects and stores accurate information concerning quotations and trading volume in the over-the-counter market. Under the NASDAQ system, market makers are required to report the volumes of trade on the basis of which the volume figures are computed. I propose to hand up to the court upon the argument of this motion several reports distributed by the National Association Securities Dealers relating to the NASDAQ system. Annexed hereto as Exhibit I is an article from one of the documents by a Mr. John H. Hodges, who was a supervisor of the NASDAQ system. Reference is made to the last question and answer in the article indicating how volume transactions are counted. Annexed hereto as Exhibit J is that section of the NASDAQ 1972 Condensed Report dealing with NASDAQ.

5. I respectfully submit that plaintiffs have met their burden of showing numerousity by a showing of a trading volume in excess of 450,000 shares during the relevant period. It is absurd for defendants to argue, particularly in view of the fact that there was widespread dissemination by investment analysts of reports on April, that there were not at least several hundred persons who bought the stock during the relevant period.

6. Exhibit K hereto consists of portions of a report of April dated June 1972. It is apparent that April and the other defendants were the source of the information disseminated by securities analysts (Exhibits B to F).

Wherefore, I respectfully request that plaintiffs' motion be granted.

Edward Labaton

Sworn to before me this
28th day of Dec. 1973.

/S/

# "How NASDAQ Works"



**John H. Hodges, Jr.**

A graduate of the University of Pennsylvania, Mr. Hodges began his career with the National Association of Securities Dealers, Inc. in 1955 as secretary of the National Quotations Committee in New York. In 1958 he was transferred to the executive offices in Washington, D.C. as special assistant to the executive director. In 1967 he became director of automated quotations and was appointed vice president of member services in 1969. Mr. Hodges was recently appointed Senior Vice President, heading the Member Services division of the Association. In addition to his previous responsibilities of supervising the NASDAQ system, he now exercises supervision over the Economics and Information Departments.

Before progressing too far into our program, we felt that it would be helpful to representatives from NASDAQ companies if we were to take a few minutes to explain exactly what NASDAQ is currently doing and to indicate the changes that have occurred in the day-to-day operations of the over-the-counter market. The significance of these changes will be more fully developed for you as our day unfolds.

In developing NASDAQ, the basic functional tenet that pervaded all of our thinking was that the negotiated characteristics of the over-the-counter market must be preserved if our market was to continue to progress toward the potential destiny that we see for a market that is based upon free competition among market makers. I hope that you will be able to see how we have set out to establish this, create this, as our plans unfold here on the screen.

The NASDAQ system operates on three levels.

Level One is intended expressly for registered representatives who are working in board rooms throughout the country.

Level Two is intended expressly for retail traders, traders who are effecting orders over the counter but who are not making markets.

Level Three is intended expressly for the market makers. Within an organization of any size you are likely to find all three levels of service operating at various points within the organization.

Level One places at the fingertips of registered representatives a real time or current quotation on just about all of the securities in the system. This information is disseminated through the same devices that have been in use throughout the industry for a number of years now but primarily in the past for last sale information on securities listed on stock exchange. I mean specifically the Quotron terminals of Scantlin Electronics, the Telequote terminals offered by the Bunker-Ramo Corporation and the Stockmaster and Videomaster terminals also being offered by the Ultronic Systems Corporation.

There are, incidentally, some 30,000 of these devices throughout the world with NASDAQ on a rate percentage also coupled with the arrangement between Ultronics and Reuters. The quotations are transmitted throughout the world so that you can begin to see at this point the dynamic effect that the startup of the NASDAQ system has had on improving the visibility of the over-the-counter market throughout the world.

Now, more precisely, the representative bid and ask which appears on these Level One devices represents the median bid and reflects the median spread from all of the markets that are made in the security by market makers. This is not the statistical average.

The computer is constantly taking all of the entries into the system, picking up the midpoint and then reflecting the median spread. This technique prevents the aberration, the possible erroneous quotation or the late quotation from ever being the one which is selected from the total mass of market makers, and then having an erroneous quotation released to these devices throughout the world.

Furthermore, we will carry an issue on the Level One system only so long as there are a minimum of two market makers in a competitive situation. The Level One quotation is never in the sole control of a single market maker.

Prior to NASDAQ it could have been quite a problem to obtain a basic piece of information such as a current quotation. Those that were dealing with branch offices of firms asking for this basic piece of information would likely find that the registered representative would have to put the request on the wire to New York where a clerk would pick it up, call a market

maker, obtain the quotation and then transmit that information back to the registered representative, who, in all probability, would have had to pick up the phone and call the customer back and give him the current quotation.

Gone are the days when this type of unnecessary activity had to be used to obtain a current quotation.

Level Two, as I said, is intended for retail traders, traders effecting orders over-the-counter.

To do this prior to the days of NASDAQ, a retail trader would refer to what used to be the bible of the over-the-counter market – the Pink Sheets – which contained a listing of the names of the market makers with the quotations that were submitted the previous morning. In the event you were in Denver, it may well have been that you received today's sheets next Tuesday. The trader would then seek to find the best market and to effect the best possible execution for the account of his firm. Under NASD rules, that trader would have tried to communicate with at least three market makers in the issue to locate the best market. But there was no way that he could have any assurance in an active security, where there may be in excess of thirty market makers, that he had in fact located the best market for the issue.

With NASDAQ Level Two we find that we are now placing at the fingertips of traders the current quotations of all of the market makers that are in the security.

Level Two identifies the five best market makers, ranked according to the bid or the ask in accordance with the instructions of the trader. A trader, who is a seller and is concerned with the bid side of the market, interrogates with the bid key on the keyboard of the terminal, and the market makers are then ranked from top to bottom according to the best bid.

If that same trader was a buyer and concerned with the ask side of the market, he would have tapped the ask key. The same market makers, of course, would appear but they would then be ranked from top to bottom according to the best offer.

In the event that there are more than five market makers in the security, he would tap the "more" key on his terminal, and he would get additional market makers. He has at his fingertips the current quotations of all of the market makers in the security.

The fact that a trader has more information than he ever had available to him before does not mean that we intend to replace the judgment and the expertise that is so vital to having the best execution effected over-the-counter.

In the event that this trader has an order in size and in his judgment the best way to effect the trade is to communicate with the firm ranked third, who will deal in size at a price very close to the current quotation, he is expected to utilize that judgment and so proceed.

The days when we had no idea if the trader was in a position to locate the best market and to effect a transaction for the account of his firm are over.

Level Three is intended expressly for the market makers. The terminal looks the same as a Level Two; it provides all of the information for Level Two that I have described. The only difference is that there are additional keys activated on the keyboard to allow the entry of quotations into the system.

In the blue bank of keys on the Level Three keyboard is an "up" arrow key and a "down" arrow key. These are short-cut keys so that a trader quoting an issue 15 to a half, who would like to go to 15 and an eighth to five-eighths, need only tap the "up" arrow and automatically both sides of his quotation will be incremented up by an eighth of a point. It is feasible for a trader to work diligently and keep his quotations current within the system.

There are several other aspects, that I would just repeat for you, that make us feel we have had a very salutary effect and will continue to do so in the future of the over-the-counter market.

First of all, by virtue of NASDAQ, we are in a position for the first time to have meaningful indices. These indices are updated every five minutes. They are available on all three levels of service. The time is past when there was no way of knowing whether the over-the-counter market was moving in consonance with the markets on the exchanges or in a contrary direction.

With respect to the news media, prior to NASDAQ the quotations that were released from New York for publication, not only in New York but elsewhere, were compiled by a group of little old men who ran around Wall Street and picked up lists of quotations from market makers that participated in furnishing quotations for publication. These little old men came back to a group of teenagers that took all of this information, arranged it in alphabetical order and – our one automated process – ran the list through the Xerox machine. They handed the reproduced copy to a runner, who was ready to dash for the subway to run the lists up to the wire services.

Today we have direct lines connecting the central computers of the NASDAQ system with the computerized facilities of United Press International and Associated Press and every hour on the hour we are releasing current quotations for all of the securities that are in the system. These quotations are received by the wire services and edited for the various lists before transmission.

As has been indicated, we have for the first time linked all of the market makers in an issue with a central computer, enabling us for the first time to release volume data for publication in newspapers. Prior to NASDAQ we had no idea of the day to day volume of the over-the-counter market. If we ever cared to find out, it involved hiring another consultant who, for

a modest sum of something like $300,000, would let us know what the volume was on a couple of days eight months ago. Today those problems are behind us. 

NASDAQ, born on February 8, 1971, is still in its infancy. We have grown a bit, as Gordon Macklin indicated. We started with 2,300 securities in February of '71, we are now at 3,400. The call rate through the system started at 350,000 calls a day; it's now running consistently at a million and a quarter as greater and greater reliance is being placed upon the system by the industry.

To grow out of our infancy, we've got to let investors know of these changes that have occurred in the over-the-counter market.

Questions and Answers – John H. Hodges

QUESTION: Does the NASD have a timetable for accomplishing the "locked-in" trade?
ANSWER: Our immediate goal is to marry the Clearing Corporation, which was referred to by Gordon Macklin, with the NASDAQ system, with the result that our membership throughout the country will be able to enter the reports of their trade through the terminal. Reports of trades would then be routed into our clearing facility. This is an extremely big undertaking. Our immediate attention is going to be directed there. The possibilities of a locked-in trade are certainly going to be explored, but automated trade reporting has first priority.

QUESTION: What are the plans for giving ranges for the high and low quotes of the year for each issue listed on NASDAQ?
ANSWER: We release at year end the high and low bid. It's available to all publications. We also release each week (I think you'll find it in the New York Times and some of the major newspapers) a recap for the week with a high and low bid for the week. As we can find publications that are interested in carrying NASDAQ statistics, we're prepared with the information. We provide all of this data every hour on the hour to the wire services. All we need is cooperative publishers.

QUESTION: Is there a possibility that a market maker will be able to show his size as well as his quote, either mandatory or at his option?
ANSWER: This is a question that I thank will be a challenge to our trading panel this afternoon. Certainly no technical reason rules it out. Maybe in time there will be an evolution. NASDAQ has had a tremendous impact on the way trading has been conducted in past years. Before NASDAQ, a trader held quotation information as close to his vest as possible. If a customer came in, he put his best foot forward. If a competitor came in, he didn't necessarily give the same quotation. All of these nuances of successful trading were pushed aside with the NASDAQ system. Suddenly the trader was being viewed by his competitors in a way which was never possible before. The adjustments these men had to make were very difficult, particularly for those who had been trading for many, many years. Now that we've been in operation for fourteen months, I think most all of them will agree that the smooth functioning of the system has improved OTC market operations. As this evolution continues, there will be other possibilities we can examine that will provide all investors and institutions with more current pieces of information about an issue.

QUESTION: What qualifies a company's stock for inclusion in NASDAQ? How can other OTC companies get on NASDAQ?
ANSWER: The basic requirement for an issue to be qualified for NASDAQ is that it be registered under Section 12(g) of the 1934 Act. This involves having a million dollars in assets, 500 shareholders, and filing reports with the Securities and Exchange Commission. This is the essence of the criteria which the NASD developed in close coordination with the Securities and Exchange Commission. We have, in addition, a minimum price requirement and we also require a minimum of two market makers to ensure a competitive situation when the issue is added to the system.

If an issue on NASDAQ had only two market makers, and one market maker were to terminate trading, we would continue the remaining market maker, but confine his quote to Levels II and III. In other words, place the quotations of the single market maker in the hands of the professionals. We would drop it from Level I service – take it out of the newspapers – because a competitive situation did not exist.

QUESTION: Would volume reports on NASDAQ trading be comparable to exchange volume as an indication of investor interest in a stock, or would there likely be a much higher content of inter-dealer trades in NASDAQ volume?
ANSWER: There would be a greater amount of inter-dealer trades, but that does not mean that our volume is necessarily inflated. The system right now is constructed so that only registered market makers are entering their volume into the system. This whole area is one that we have under continuing study. A special committee is about to be appointed to consider the feasibility of having non-market makers enter volume into the system. There can, on given days, be quite a bit of volume which is handled by a non-market maker and is not reflected in the papers. The problems, of course, of bringing all the volume in a security together and having it reflected in the newspapers, are not confined to the OTC market. There has been trading activity in General Motors which, certainly, at the time, was not reflected in the newspapers. As work continues to develop a composite quotations system – a composite tape – such as is proposed by the SEC, I think the quality of the data will continue to improve.

QUESTION: When will there by a weekly list of new stocks, dropped stocks, and name changes?
ANSWER: The NASD is developing a publication which would contain that information plus a great deal more. We recognize there is a great need for a publication which would have the closing quotes and the volume on all of the securities that are in the system. It's just not realistic to expect that any single newspaper, publishing this information as news, is ever going to be carrying all of the securities in the system. There is a need, and there is a plan being developed right now whereby all that data would be available.

QUESTION: On the volume figures now given, what transactions (purchase, sales, etc.) constitute the volume?
ANSWER: We count in the volume principal transactions by market makers. Market makers enter purchases and sales separately. In the event a market maker would have what we call an agency cross – he is in the middle and there is an account, not a market maker on either side – that is also entered into the system. If a market maker bought 100 shares and sold 100 shares, we would count 100 shares for that market maker. We do not add the purchases and sales together to come up with what, in all probability, would be an inflated number. In the event a market maker sold 100 shares to another market maker, then it would appear as 200 shares in the paper. In some respects, it is comparable to the situation on the exchanges where a specialist participates and buys into his own account. Fifteen seconds later he sells 100 shares. That would go across the tape twice and would be counted twice.

interest is the key to the Association's regulatory programs, so is it the key to its service efforts.

## NASDAQ

A major service is NASDAQ, the NASD's automated quotations system for over-the-counter securities. NASDAQ began operation on February 8, 1971, transforming a loosely-connected OTC market into a sophisticated communications network. Comprehensive indices and trading volume figures, reflecting OTC market activity, are available through NASDAQ.

With the second anniversary of NASDAQ, it can be fairly stated that the system has been a success in reaching its original objectives—giving the OTC market an automated quotations system. NASDAQ now provides immediate access to current representative bid and asked quotations in OTC issues throughout the world. In addition to the 25,000 Level I terminals providing representative quotes to U.S. users, 1,027 terminals provide the same infomation to users in other countries.

Reliance on the system continues to exceed pre-NASDAQ expectations. A new high for daily calls (requests for quotes, indices, volume, etc.) was set in May—1½ million. During peak periods, such as market opening, the system may handle 100 calls per second. There are 1,685 Level II and III terminals hooked into the system. Level III's are used by market-makers to put their quotations into the system. Level II's display all market-maker quotations for any NASDAQ issue.

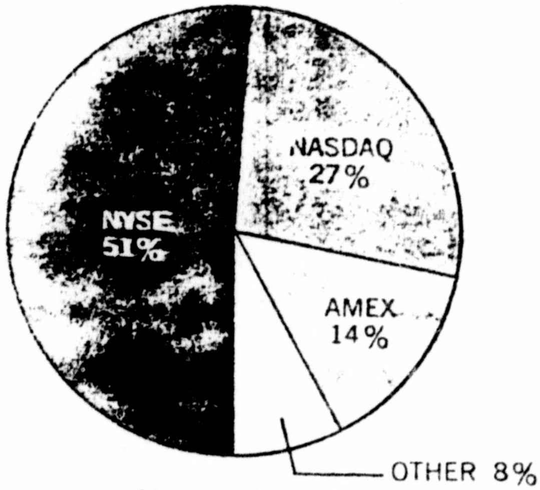
Adding an average of ten issues a week during most of 1972 has brought the total number of NASDAQ securities to 3,500. These issues are represented by nearly 23,000 market-making positions, an average of six to seven market-makers per security.

Exchange listed securities with two or more NASDAQ market-makers are eligible for inclusion in NASDAQ. The NASD Board's final decision to add qualified listed issues was made after reviewing a study of 10 month's experimental inclusion of listed securities.

In a related area, the Board also voted to permit qualified exchange specialists who are NASD members to put their quotes on NASDAQ. Beginning in May, quotations of two specialists on the Philadelphia-Baltimore-Washington Stock Exchange began appearing on NASDAQ terminal screens. In August, the bid and asked quotes of



**Trading Activity on NASDAQ and Exchanges**




Shares Traded

| | |
|---|---|
| NYSE | 4,138,187,706 |
| NASDAQ | 2,209,548,500 |
| AMEX | 1,117,971,382 |

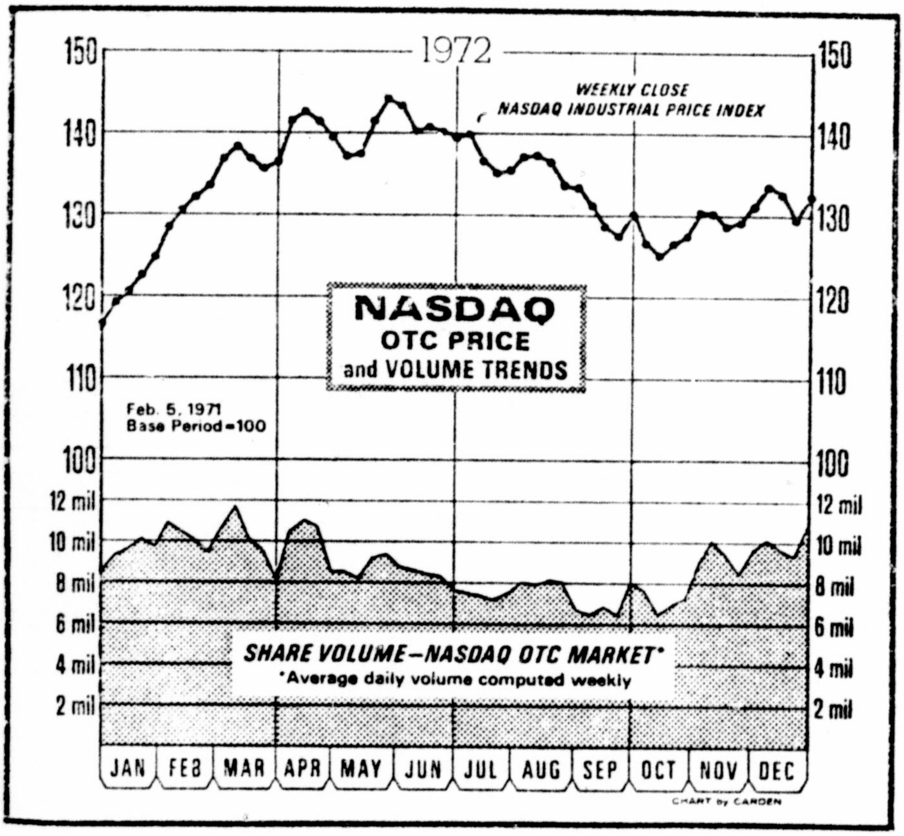
**In 1972 trading volume on NASDAQ was greater than the combined volume of all other exchanges, with the exception of the New York Stock Exchange. NASDAQ volume totaled over half the volume of NYSE.**

two National Stock Exchange specialists were added to NASDAQ.

The NASDAQ receiving network was expanded in April when non-members were permitted to subscribe to Level II service. This action gave them direct access to all bid and asked quotations in NASDAQ issues. Chief potential beneficiaries were institutions, such as banks, insurance companies, mutual funds and pension plans.

Nationwide access to current, accurate quotations encourages a competitive marketplace; and the Association believes competition is the best regulatory tool available. However, some rules have been necessary to insure the integrity of NASDAQ. In the first year of operation a rule was instituted requiring market-makers to trade at least a normal unit of trading (usually 100 shares) at their current NASDAQ quotations upon request of another member. Market makers are also required to report each day's purchases and sales in all issues in which they make a market. Some fines have been imposed for violations of these rules.

To aid the Association in judging complaints against NASDAQ market makers for backing away




**These advertisements were placed in nationally distributed publications. They briefly explained NASDAQ and encouraged the reader to order a booklet describing NASDAQ and the OTC market.**

The New York Times

**Trading in securities carried on NASDAQ averaged more than 8.5 million shares per day in 1972. A record 14.3 million shares was reached on December 29. The NASDAQ industrial index experienced a 13.6% rise in 1972.**

from their quotations, a NASDAQ time and date were made available on the terminals. All members are expected to interrogate the system each morning for the NASDAQ time and to set clocks used for time-stamping of tickets.

Stronger rules covering market-makers' temporarily withdrawing their quotations from the system were instituted in late November. The Association observed a few market-makers withdrawing quotations whenever a sudden movement in a security's price occurred. The new rules require NASDAQ market-makers to obtain an "Excused" status from the Association when withdrawing a quote. Failure to do so may result in disciplinary action against the offending market-maker.

Investors, corporate issuers, researchers and analysts all benefited when NASDAQ produced, for the first time, a variety of stock price indices, broken down by industry groups, and information on the volume of NASDAQ trading activity. Investors now are able to fully study the market performance of OTC stocks.

Now that the relevant information is available to the public, the Association is working to obtain more flexible margin privileges for NASDAQ stocks. Although exchange listed stocks are automatically eligible for margin, only specified OTC issues are eligible under the margin rules of the Federal Reserve Board. And the margin standards for OTC issues are higher, in many instances, than the listing requirements of the exchanges. Seeking to correct this unfair situation, the NASD has computerized a six-month data base of relevant facts on NASDAQ companies and will relay information weekly to the Federal Reserve Board staff. Eventually, the NASD seeks equal treatment of NASDAQ stocks with listed stocks under the margin rules.

In 1972 the Association became particularly aware of the interest of foreign investors in NASDAQ issues—an interest that is partially hampered by the laws of many countries which restrict their citizens' purchases of American securities to those listed on stock exchanges. Recognizing that these laws resulted from

# INDEX

HISTORY

CURRENT PROJECTS, GROSS VALUES

LOCATION CHART
RADIO NETWORK

WHO ARE WE?
DIRECTOR'S SKETCHES

ACCOMPLISHMENTS

MANAGEMENT DISTRIBUTION (CHART)

PROFIT GROWTH CHARTS

PRESS NOTICES

QUARTERLY REPORT

**JUNE 1972**

THE FOLLOWING PRESENTATION IS OFFERED BY APRIL INDUSTRIES, INC. ON ITS OWN BEHALF.

OUR PURPOSE IS TO DEEPEN OUR RELATIONSHIP WITH THE PUERTO RICAN BUSINESS COMMUNITY. WE ARE ALREADY AN INTEGRAL PART OF IT AND WE ARE RAPIDLY EXPANDING OUR POSITION OF IMPORTANCE WITHIN IT.

TO UNDERSTAND OUR COMPANY AND TO SHARE OUR CONFIDENCE IN APRIL'S GROWTH YOU NEED TO KNOW MORE ABOUT US THAN HAS RECENTLY APPEARED IN THE PUERTO RICAN PRESS WHICH HAS BEEN GIVING US WATCHFUL ATTENTION.

The name of April, the fourth month of the year, comes from APRILIS, the latin word for "to open." It is the time of year when nature opens, after the frosts of winter. When buds pop and sleeping animals awake and birds fly north to raise their families. April is the time when our hearts feel the nudge of love, when young men's fancies turn. People born in April are Aries, gentle, romantic and fun loving. People conceived in April are Sagittarians, Capricorns and sometimes Aquarii; the dreamers, creative geniuses and leaders. April is when some sow and others reap. It is the month of good spirits, "April's fools are wise men too," and the month of Holy Week of loving memories.

April is our name. We don't know why they chose it back in Utah when we started. Perhaps to remember the new daisies and sweet peas in surrounding fields. But we like it. And now we're amongst you, "opening up" new homes for people each day and ever mindful of our good name. We're builders.

## HISTORY

The company's predecessor, April Industries, Inc., was organized in Utah in October, 1916 under the name Alta Helena Mining and Milling Company, and had engaged, since its organization and until 1961, in mining operations in Alta, Utah. In 1961 it curtailed such operations and commenced the sale of its properties as lots for single family homes. Such land sales activities were terminated in 1968. In 1969 it changed its name to April Industries, Inc. ("April-Utah").

In November 1970, April-Utah acquired a 37.5% interest in M.D. Construction Company, Inc., a subsidiary of Futura Development of Puerto Rico, Inc.

In April 1971, April Industries, Inc., a Delaware corporation, was organized by April-Utah as a wholly-owned subsidiary. and thereafter April-Utah was merged into the Delaware corporation, the resulting entity being April Industries, Inc., a Delaware corporation.

In June 1971, April-Utah acquired Futura and its subsidiaries, a group of corporations organized at various times between 1966 and 1969 which were at the time of such acquisition primarily engaged in the construction and sale of single family houses in Puerto Rico.

(Delaware)

# April Industries, Inc.

Parker Modular Industries, Inc.
27 homes for private buyers – Average selling price $67,000.00
Total: $1,809,000.00

Futura Development of Puerto Rico, Inc.
18 homes for private buyers – Average selling price: $24,000.00
Total: $432,000.00

Jardines Condado Moderno, Inc.
General Contract – 304 Single Family Units. Contract
Total: $3,621,079.00
Balance: $3,099,665.00

**April Industries, Inc.** (Puerto Rico)

SUBSIDIARIES

M.D. Construction Company
275 homes for CRUV
CRUV – Average selling price: $17,500.00
Total: $4,812,500.00

Arias Realty Corp.
210 Garden Apartments for CRUV – Average selling price: $23,000.00
Total: $3,255,000.00

SUBSIDIARIES

Southeast Development Corporation
525 Single Family Units for private buyers – Average selling price: $23,000.00 Total: $12,328,235.00

April Park Condominium Corporation
A 26 story high rise with 384 apartments, commercial area and related amenities
Total: $11,328,235.00

Bella Vista Gardens
850 homes for private buyers.
Average selling price: $25,000.00 – Total: $21,250,000.00
Contract is for management, construction, sales for 60% of the Net Profits.

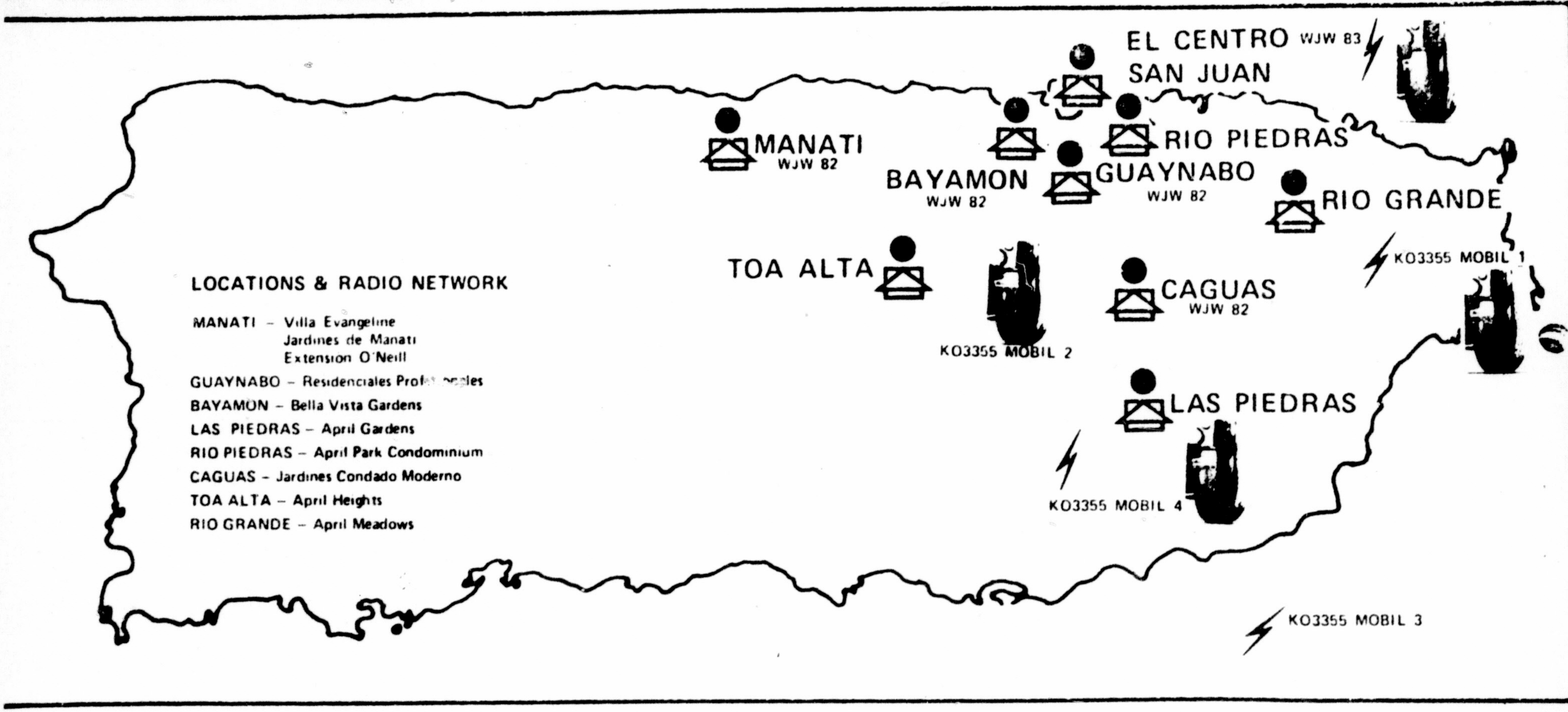
GROSS SALES IN PROGRESS

| | |
|---|---|
| Parker Modular Industries, Inc. | $ 1,809,000 |
| Futura Development of Puerto Rico, Inc. | $ 432,000 |
| Jardines Condado Moderno, Inc | $ 3,099,665 |
| M. D. Construction Company | $ 4,812,500 |
| Arias Realty Corporation | $ 3,255,000 |
| Southeast Development Corporation | $12,075,000 |
| April Park Condominium Corporation | $11,328,235 |
| Total | $36,811,400* |

*Does not include Bella Vista Sales.

**Work in progress....**

# Puerto Rico




THIS IS WHERE WE ARE
LOCATED AND THE
KEY TELLS WHAT WE
DO THERE.

## WHAT HAVE WE ACCOMPLISHED?

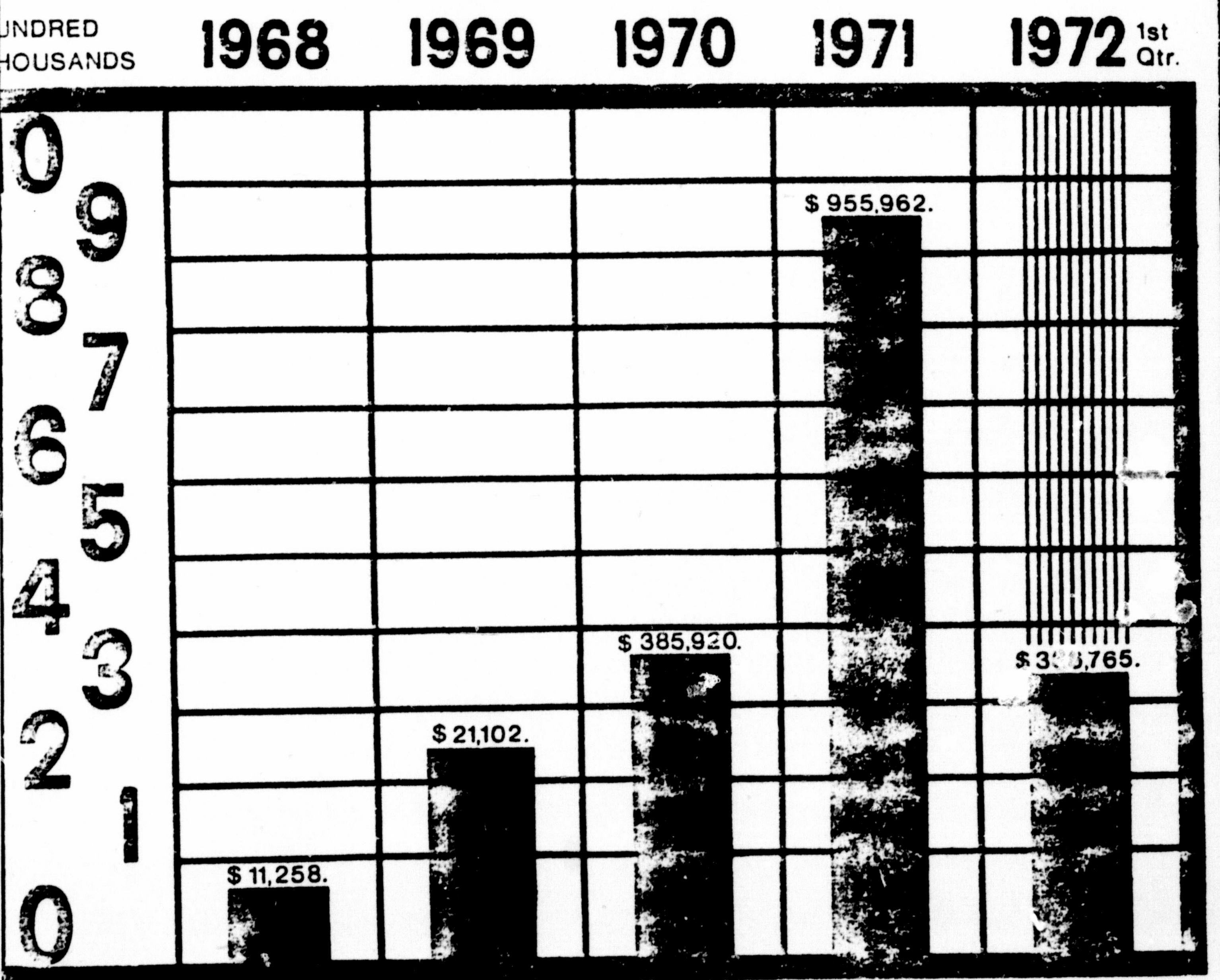
Our team of management and construction specialists have forged a powerful and unique construction company. We have achieved a maximum degree of operating self sufficiency in the field. This was our goal from the beginning. Today, April does all its earth work and building with its own equipment and its own personnel. No sub-contractors. Thus, we are able to set and meet construction schedules which would not be attempted by less independent field organizations.

April's equipment inventory meets all its present needs and is constantly enlarging and specializing to handle new situations. It is all maintained and serviced by April trained crews in our own shops.

April's supervisory staff is the result of much effort, dating back to the very beginning of the company. Most of these specialists have been with the company from the start. Their interest in April and their smooth coordination of functions provide a basis for accurate estimating and job planning.

Our control of equipment and personnel is the key to April's profit making. Our management and administrative team has been vigorously turning this key and will continue to do so.

April Industries, Inc.




NET ANNUAL INCOME

| | 1969 | 1970 | 1971 | 1972 1st Qtr. |
|---|---|---|---|---|
| REVENUES | 1,317,481 | 3,887,440 | 4,923,859 | 1,861,250 |
| NET INCOME | 21,102 | 385,920 | 955,962 | 336,765 |
| EARNINGS PER SHARE | 2¢ | 31¢ | 77¢ | 25¢ |
| NET PROFIT MARGIN | 1.6% | 9% | 19% | 18% |

us cour US COURT OF APPEALS: SECOND CIRCUIT

Index No.

PARKINSON,
Plaintiffs-Appellees.

against

APRIL INDUSTRIES, INC.,
Defendants-Appellants.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, Victor Ortegá, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 1027 Avenue St. John, Bronx, New York

That on the 15 day of Nov. 1974 at 255 E. 42nd Street, NYC

deponent served the annexed APPENDIX upon

Shatzkin, & Cooper

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

Sworn to before me, this 15 day of November 1974

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418050
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

Victor Ortega
Print name beneath signature
VICTOR ORTEGA